

GENERAL CONSIDERATIONS AROUND DOMESTIC PREFERENCE

What **terms** apply to my award and what should I be reviewing at my facility to comply?



CA-FATC TERMS AND CONDITIONS	ARTICLE 45 DOMESTIC PREFERENCE FOR PROCUREMENTS	ARTICLE 46 MADE IN AMERICA	ARTICLE 47 BUILD AMERICA, BUY AMERICA	CA-FATC TERMS AND CONDITIONS	ARTICLE 45 DOMESTIC PREFERENCE FOR PROCUREMENTS	ARTICLE 46 MADE IN AMERICA	ARTICLE 47 BUILD AMERICA, BUY AMERICA
SOURCE	UNIFORM GUIDANCE 2 CFR §200.322	NSF RESPONSE TO EO 14005	INFRASTRUCTURE INVESTMENT AND JOBS ACT	MAJOR FACILITY OPERATION STAGE AWARDS			
	<ul style="list-style-type: none"> Applies to all financial assistance awards Provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States Flow-down to subawards/contracts Best Effort/Practice 	<ul style="list-style-type: none"> Applies to all Research Infrastructure financial assistance awards Cites 2 CFR 200.322 preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States Flow-down to subawards/contracts Enhanced documentation requirement Does not apply to: <ul style="list-style-type: none"> Funds awarded prior October 4, 2021 Procurements <\$10K Commercially available IT No waiver process Considerations: <ul style="list-style-type: none"> Domestic Non-availability Unreasonable Cost (End product cost > 20-30%) 	<ul style="list-style-type: none"> Applies to any financial assistance awards with construction, alteration, maintenance, or repair efforts in the US All iron and steel, manufactured products, and construction materials Flow-down to subawards/contracts Does not apply to: <ul style="list-style-type: none"> Funds awarded prior to May 14, 2022 Scientific Instrumentation Applied in the US (including U.S. territories) Waiver process based on: <ul style="list-style-type: none"> Public interest Non-availability (quantity or quality) Unreasonable Cost (Overall project cost > 25%) 	Integrated Ocean Drilling Program	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – For all construction, alteration, maintenance, and repair involving iron and steel, manufactured products, and construction materials purchased through new sub-awards or subcontracts with funding obligated after May 14, 2022, at Texas A&M or other domestic sites, including work on the JOIDES Resolution (a leased, foreign-owned vessel) if conducted in a U.S. shipyard.
				National Center for Atmospheric Research	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – For all construction, alteration, maintenance, and repair involving iron and steel, manufactured products, and construction materials purchased through new/modified sub-awards or subcontracts with funding obligated after May 14, 2022. If awarded today, the Aviation Facility would fall under BABA but would likely be funded by NSF under a separate construction award so that appropriate T&Cs could be applied. Aircraft are infrastructure, but the scientific instruments on board the aircraft are covered under Article 46, not BABA. Similarly other scientific instruments employed by NCAR are not covered under BABA (including high performance computing) but any facility that houses the instrument is covered.
				National High Magnetic Field Laboratory	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – For all alteration, maintenance, and repair involving iron and steel, manufactured products, and construction materials purchased through new/modified sub-awards or subcontracts with funding obligated after May 14, 2022. The magnets would be considered scientific instruments. The specialized cooling systems would require discussion with NSF.
				Laser Interferometer Gravitational Wave Observatory	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – For alteration, maintenance, and repair involving iron and steel, manufactured products, and construction materials purchased through new/modified sub-awards or subcontracts with funding obligated after May 14, 2022. Maintenance or repair to the Beam Tube Enclosure would fall under BABA (concrete and steel). The interferometers are scientific instrumentation.
				Gemini South Observatory	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	NO – For any activities in Chile. Gemini South is in Chile and not subject to BABA since any construction, alteration, maintenance, and repair would not happen in the U.S. However, if the recipient has a subaward or a contract with a domestic firm to manufacture products for inclusion at Gemini South, the BABA requirements would apply to that manufactured product.
				Gemini North Observatory	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – Gemini North is in Hawaii; all alteration, maintenance, and repair involving iron and steel, manufactured products, and construction materials purchased through new/modified sub-awards or subcontracts with funding obligated after May 14, 2022. Maintenance and repair to the optical path (mirrors) and other scientific instrumentation is not covered under BABA.
				Ocean Observatories Initiative	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – For all alteration, maintenance, and repair involving iron and steel, manufactured products, and construction materials purchased through new/modified sub-awards or subcontracts with funding obligated after May 14, 2022. Buoys, gliders, and undersea cabling would all be considered scientific instrumentation. Any funds provided to repair, maintain or upgrade buildings or other shore-side facilities would be covered under BABA.
				National Ecological Observatory Network	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – For all alteration, maintenance, and repair involving iron and steel, manufactured products, and construction materials purchased through new/modified sub-awards or subcontracts with funding obligated after May 14, 2022. This would include work on towers and associated enclosures on fixed sites as well as portable assets. The scientific instruments on those towers, enclosures and portable assets would not be covered under BABA.
				Academic Research Fleet	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – Research vessels are infrastructure. This includes routine and periodic shipyard periods and alongside maintenance and repair. BABA would apply to iron and steel, manufactured products, and construction materials purchased through new/modified sub-awards or subcontracts with funding obligated after May 14, 2022. Emergency drydocking or legitimate operational need to conduct drydocking in a foreign port would not be covered under BABA.
RESEARCH INFRASTRUCTURE							
Engineering Center	YES	NO – NSF does not consider Centers to be Research Infrastructure.	YES – However, applicable construction, alteration, maintenance, or repair activities are anticipated to be rare for a Center award.				
Mid-scale Design Award	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – However, design awards typically would not have construction, alteration, maintenance, or repair activities. Any such activity must follow this requirement. For example, if physical space is modified/altere, BABA would apply to the construction activities and materials used to modify or alter the space.				
Mid-scale Implementation Award	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – For all construction, alteration, maintenance, and repair involving iron, steel, manufactured products, and construction materials purchased through new/modified sub-awards or subcontracts with funding obligated after May 14, 2022.				
Major Facility Design Stage Award	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – However, Design Stage awards typically would not have construction, alteration, maintenance, or repair activities. Activities such as a developing mock-up would generally not be considered “infrastructure” projects and prototyping generally involves scientific instrumentation which would fall under Article 46. If physical space is modified/altere to allow for development of these items, BABA would apply to the construction activities and materials used to modify or alter the space.				
MAJOR FACILITY CONSTRUCTION STAGE AWARDS							
Daniel K. Inouye Solar Telescope	YES	NO – There was no new funding obligated after October 4, 2021. The project was completed in November 2021.	NO – There was no new funding obligated after May 14, 2022. The project was completed in November 2021. The operation of DKIST under NSO would be similar to other examples for telescopes in operations below.				
Vera C. Rubin Observatory	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	NO – For the work in Chile. Rubin Observatory is being constructed in Chile, not the U.S., and therefore activities on site are not covered by BABA. However, if the recipient has a subaward or a contract with a domestic firm to manufacture products for inclusion at the site, the BABA requirements would apply to that subaward or contract.				
Large Hadron Collider and High Luminosity Upgrades	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	NO – For the work at CERN. The assembly (essentially the “construction site” for these projects) is taking place at CERN in Switzerland, not the U.S., and therefore the activities at CERN are not covered under BABA. However, if a recipient has a subaward or a contract with a domestic firm to manufacture products for inclusion at the site, the BABA requirements would apply to that subaward or contract. Additionally, if physical space within the United States is modified/altere, BABA would apply to the construction activities and materials used to modify or alter the space.				
Leadership Class Computing Facility (If authorized for a Construction Stage award today)	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – For all construction involving iron and steel, manufactured products, and construction materials (including cooling and electrical) if a financial assistance award were used for the data center. The computing hardware is considered scientific instrumentation and would be covered under Article 46, not BABA.				
Regional Class Research Vessel	YES	YES – For goods, products and materials purchased through new/modified sub-awards or subcontracts with funding obligated after October 4, 2021.	YES – Mobile assets (ships, aircraft, etc.) are considered infrastructure by NSF. BABA would apply to all iron and steel, manufactured products, and construction materials purchased through new/modified sub-awards or subcontracts with funding obligated after May 14, 2022. Scientific instrumentation as part of outfitting would be covered under Article 46, not BABA.				

This Domestic Preference Table is illustrative only and does not represent all the complexities of each NSF Research Infrastructure award or how the requirements of the Domestic Preference terms and conditions apply.

Visit the NSF Build America, Buy America website for more information, guidance documents, definitions, and requirements.



PLEASE reach out to your cognizant NSF Program Officer, Grants and Agreements Officer, LFO Liaison or the Division of Acquisition and Cooperative Support for assistance.