

## **BABA Checklist & Best Practices**

### **BABA Activities Checklist**

<i>ACTIVITY</i>	<b>Consultant</b>	<b>Engineer/ Architect</b>	<b>Contractor</b>
<b>A. Pre-Award</b>			
While preparing the bid packet, identify bid items that will, or are likely to include BABA Applicable Materials.			
Include BABA Requirements when advertising for bids to ensure responsible bid responses.			
<b>B. Post-Award</b>			
Finalize list of all materials based on the bid awarded.			
Fill out Form A400 with the initial list of <i>all</i> materials to be used in the project & upload to the Group B Performance Report in TDA-GO.			
As materials are ordered, request a Manufacturer's Certification for all BABA-applicable materials that are included in the current and all previous BABA Implementation Phases.			
Review and update the A400 as necessary with each submitted Change Order or Construction MSR.			
<b>C. Payment Requests</b>			
Submit an updated Form A400 & all <i>new</i> Manufacturer's Certifications with <i>each</i> payment request for Construction funds.			
<b>D. Satisfy BABA Special Condition</b>			
Upload the <i>final</i> Form A400 to the Special Condition on the Grant Overview page in TDA-GO.			

### **BABA Best Practices**

#### **Documenting Materials on Form A400:**

- The purpose of Form A400 is to document **ALL** materials being used in a project to ensure BABA compliance. Even materials that are not BABA Applicable should be listed so TDA can ensure all compliance requirements are met and provide appropriate Technical Assistance to help prevent potential Findings.
- Form A400 requests the Related Bid Item # for each Material Description. However, this form should list all materials, not necessarily all bid items.
  - Some materials (such as fasteners) may be used across multiple bid items. For ease of reporting, these materials may be listed once with each associated Bid Item # noted rather than listing them out separately for each Related Bid Item #.
  - Some bid items (such as Curb & Gutter) may use multiple different materials (Cement Aggregate & Rebar). Each material should be listed separately (to the extent feasible).

- When submitting Form A400 with the Group B Performance Report, not all information may be known (such as the Material Unit Cost). TDA will just be looking for the Material Description, Bid Item #, and Quantity. If the material listed is not BABA Applicable or exempt under the current phased implementation, please mark that in the Mfg's Certification column.
- Anytime there is a change to the materials being used (such as on a Change Order adding new bid items or when awarding a second Construction Contract that includes substantially different work), please ensure Form A400 is updated and submitted in TDA-GO in the Additional Documentation attachment field. For quantity-only Change Orders, ensure the A400 submitted on all subsequent Payment Requests is updated to reflect those changes.
- TDA has provided two lists of materials that may be used as guides and safe harbor for identifying materials subject to BABA. The first list is published by the Texas Water Development Board and can be found [HERE](#). The second list is included in the Orange "Phased Implementation Schedule" tab at the bottom of the Form A400.

### Payment Request Procedures:

- Each time a Payment Request is submitted for Construction funds, an updated Form A400 is required to be uploaded to the Request.
- The first time Construction funds are requested for a specific bid item, all Manufacturer's Certifications for materials associated with that bid item must be submitted with the Payment Request (mark the Mfg's Certification column on Form A400 as "Attached"). If a Manufacturer's Certification has already been submitted for a specific material in a previous payment request, it does not need to be re-submitted (mark the Mfg's Certification column on Form A400 as "Submitted").

### Satisfying BABA Special Condition:

- When submitting the final payment request for 100% of construction funds, upload the finalized Form A400 to the Special Condition upload field on the Grant Overview Page in TDA-GO. TDA is not notified when a change is made to the Grant Overview page, as such, please email your TDA Grant Specialist whenever uploading any document to this page. Once notified, your TDA Grant Specialist will mark the Special Condition as complete.

### Mfg's Certification Option Meanings:

<i>OPTION</i>	<b>Meaning</b>
<b>Attached</b>	The Manufacturer's Certification for this material is attached to this Payment Request
<b>Submitted</b>	The Manufacturer's Certification for this material was submitted with a previous Payment Request
<b>No, 5%</b>	This material is BABA Applicable but is part of a <i>De Minimis</i> portion of the project.*
<b>No, Exempted Phase</b>	This material is BABA Applicable but is not required to be reported under the current Implementation Phase. A Manufacturer's Certification is not required to be submitted.
<b>Not BABA Applicable</b>	This material is not BABA Applicable under any phase, and no Manufacturer's Certification is needed.

*\*HUD has waived the application of the Buy America Preference for a De Minimis portion of an infrastructure project, meaning a cumulative total of no more than 5% of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of \$1 million. Grant Recipients are not required to submit BABA documentation for materials claimed as part of the De Minimis. Use the % column on Form A400 to determine if a material may be included in the De Minimis. The total % of all materials claimed as part of the De Minimis must be less than or equal to 5%. Only BABA Applicable materials are used to calculate the De Minimis.*