

BABA Checklist, Instructions, Definitions, & FAQs

BABA Activities Checklist

ACTIVITY	Consultant	Engineer/ Architect	Contractor
A. Pre-Award			
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. Post-Award			
At the Pre-Construction meeting, finalize list of <i>all materials</i> to be used for the project based on the bid awarded and provide to the Grant Administrator.			
Enter list of <i>all permanently installed materials</i> to be used for the project into the BABA Reporting page under the Group B Performance Report in TDA-GO.			
As materials are ordered, request a Manufacturer's Certification for all BABA-applicable materials for which a waiver is not being claimed and upload them to the correct material row on the BABA Reporting page.			
Review and update the BABA Reporting page throughout the life of the grant with each submitted Change Order or Construction MSR.			
C. Payment Requests			
Review BABA Reporting page prior to submitting each payment request and ensure the necessary Manufacturer's Certifications are uploaded. TDA will not release funds for materials that require BABA Certification unless the Certification is uploaded to the BABA Reporting page.			
D. Satisfy BABA Special Condition			
On the BABA Reporting Page, select "Print Document" in the left navigation menu. Have the AO initial and upload to the PCR (and Grant Overview page if applicable).			

BABA Instructions

Documenting Materials for BABA Compliance:

- The purpose of the BABA Reporting page in TDA-GO is to document **ALL permanently installed materials** being used in a project to ensure BABA compliance. **ALL permanently installed materials**, even materials that are not BABA Applicable, must be listed on this page so TDA can ensure all compliance requirements are met and provide appropriate technical assistance to help prevent potential findings.
- The BABA Reporting page requires each material to be listed along with each corresponding bid item #. However, this is a list of **materials**, not a list of bid items (and not all bid items may be represented).
 - Some materials (such as fasteners) may be used across multiple bid items. For ease of reporting, these materials may be listed together in one row with each associated Bid Item # noted rather than listing them separately by 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 Group B Performance Report, the Material Cost may not yet be known. At this point, TDA will primarily be reviewing the BABA Reporting page for the Material Description, Related Bid Item #(s), and Waiver Status. If the material listed is not BABA Applicable or if a waiver will be claimed, please indicate that using the dropdown menu under Waiver Status.
- Any change to the materials being used (such as on a Change Order [CO] to add new bid items or change the quantity of existing materials, or when awarding a second Construction Contract), please answer “Yes” to the BABA question on the CO page and update the BABA Reporting page.
- TDA has provided a list of materials that may be used as guide and safe harbor for identifying materials subject to BABA. This list is published by the Texas Water Development Board and can be found [HERE](#).

Payment Request Procedures:

- Each time a Payment Request is submitted for Construction funds, the BABA Reporting page must be reviewed for accuracy and updated as necessary.
- Before Construction funds are requested for a specific bid item, the Manufacturer’s Certification for each associated material must be uploaded to the BABA Reporting page in the field for those materials. TDA will review the Certifications and, if acceptable, check the “Reviewed by TDA” box. For materials that are Not BABA Applicable or if a waiver is applied, leave that row’s upload field blank. As a note: TDA **will not** release funds for a bid item until each of the associated materials have any necessary Certifications uploaded to the BABA Reporting page.

Satisfying BABA Special Condition:

- After the final payment request for 100% of construction funds is submitted, navigate to the BABA Reporting page in TDA-GO. In the left navigation menu, scroll to the Tools section and select “Print Document”. Select “Include with Attachments” for the BABA Reporting page only. Have the Authorized Official initial the document and upload it to the Project Completion Report (PCR) in the appropriate field. If a grant includes the BABA Special Condition on the Grant Overview page, upload the same document to that field and notify the assigned TDA Grant Specialist via email.

Waiver Status Option Meanings:

OPTION	Meaning
Certification Required	This material is BABA Applicable and a Manufacturer’s Certification or other acceptable BABA documentation will be provided.
De Minimis Waiver Claimed	This material is BABA Applicable, but the cost is less than 5% of the cumulative cost of all BABA Applicable materials. No BABA documentation will be provided. *
Phased Implementation Waiver Claimed	This material is BABA Applicable, but BABA documentation is not required to be provided under the current Implementation Phase. No BABA documentation will be provided.
Not BABA Applicable	This material is Not BABA Applicable and not subject to any BABA documentation requirements. No BABA documentation will be provided.
Other Waiver Submitted for Review	This material is BABA Applicable, but the Grant Recipient will be submitting a waiver request to exempt it from BABA reporting requirements.

**HUD has waived the application of the Buy America Preference for a De Minimis portion of an infrastructure project, (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 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 BABA Compliance Metrics section of the BABA Reporting page 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.*

BABA Definitions

Materials vs Components:

- **Materials:** The term “Materials” is used by TDA to describe all articles, materials, and supplies that are used within a TxCDBG funded infrastructure project.
- **Components:** The term “Component” is defined in the Code of Federal Regulations as an “article, material, or supply, whether manufactured or unmanufactured, incorporated directly” into a “construction material”.

Iron and Steel Products:

- The term “iron and steel products” is defined in 2 CFR 184.3 as materials that consists wholly or predominantly of iron or steel, or a combination of both.
 - **Predominantly iron or steel or a combination of both** means that the cost of the iron and steel content is more than 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the mill products, castings, or forgings utilized in the manufacture of the product. *This information should be provided by the manufacturer.*

Section 70917(c) Materials:

- The term “section 70917(c) materials” is defined in 2 CFR 184.3 as cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Construction Materials:

- The term “construction materials” is defined in 2 CFR § 184.3 as materials that consist of only one of the items listed below. Construction Materials are broken into two separate categories based on the Phased Implementation Waiver.
 - **Specifically Listed Construction Materials** include:
 - Non-ferrous metals;
 - Lumber;
 - Composite building materials; and
 - Plastic and polymer-based pipe and tube.
 - **Not Listed Construction Materials** include:
 - Plastic and polymer-based products other than composite building materials or plastic and polymer-based pipe or tube;
 - glass (including optic glass); and
 - drywall.
 - **As a note:** minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material.

Manufactured Products:

- The term “manufactured products” is defined in 2 CFR 184.3 as materials that have been:
 - Processed into a specific form and shape; or
 - Combined with other materials to create a product with different properties than the individual materials.
- **As a note:** If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material, then it is not a manufactured product. However, a material classified as a manufactured product may include components that are construction materials, iron or steel products, or section 70917(c) materials.

BABA FAQs

How should materials be classified for BABA reporting purposes?

- Materials should only be classified into one of the following categories to determine when BABA requirements apply:
 - BABA Applicable Materials:
 - Iron or steel products;
 - Construction materials; or
 - Manufactured products.
 - BABA-Exempt Materials:
 - Section 70917(c) materials.
- Each material should be classified in *only one* of the categories listed above. In rare cases, a material may not fall under any of the categories listed here (contact TDA's BABA Subject Matter Expert for guidance). Use the [TxCDBG BABA Material Classification Tool](#) to assist with classifying materials.
 - **The classification of a material must be made based on its status at the time it is brought to the work site.** Section 70917(c) materials that are used at the work site, such as wet concrete or hot asphalt, are not subject to BABA requirements. However, Section 70917(c) materials may be components of manufactured products if, for example, they are used to produce precast concrete products before being transported to the work site. In this case, the concrete is a *component* of a manufactured product and BABA requirements apply.

What documents will TDA accept as proof of BABA compliance?

- A copy of the product description or technical specifications provided by the manufacturer that:
 - Identifies the item purchased, and
 - Provides sufficient detail to conclude that the materials comply with BABA.
- A certificate, letter, or other documentation provided by the manufacturer that:
 - Identifies the item purchased;
 - Provides sufficient detail to conclude that the materials comply with BABA; and
 - Signed by an authorized company representative OR issued by a verified regulatory compliance office within the company.
- A signed certification from the contractor of a project certifying compliance with BABA.
- **TDA's BABA Contractor Certification (Form A402) and BABA Manufacturer Certification (Form A403) meet these requirements.**
- **TDA reserves the right to request additional documentation at any time.**

Are there any waivers available?

- There are two waivers currently in effect for HUD programs which are applicable to TxCDBG projects and one waiver which may be requested. These waivers include:
 - **Phased Implementation Waiver**
 - HUD has established a Phased Implementation Waiver which automatically applies to all CDBG Formula Grants. This waiver allows TxCDBG Grant Recipients to delay BABA reporting on categories of materials based on the schedule below:
 - **Iron and Steel Products** – BABA reporting required for all grants.
 - **Specifically Listed Construction Materials** – BABA reporting required for all grants awarded after 9/1/2024.
 - **Not Listed Construction Materials** – BABA reporting required for all grants awarded after 9/1/2025.
 - **Manufactured Products** – BABA reporting required for all grants awarded after 9/1/2025.

- The [TxCDBG BABA Material Classification Tool](#) includes these reporting dates.
- **De Minimis Waiver**
 - HUD has established a De Minimis Waiver which automatically applies to all HUD-administered infrastructure projects. TxCDBG Grant Recipients may apply this waiver to a maximum cumulative total of 5% of the total cost of BABA Applicable materials used in the project. Only BABA Applicable materials are used to calculate the De Minimis.
 - The total cost of BABA Applicable materials can be determined by adding the following together:
 - Total cost of all Iron and Steel Products
 - Total cost of all Construction Materials
 - Both Specifically Listed and Not Listed
 - Total cost of all Manufactured Products
 - Once the above amounts are combined, multiply by 0.05 to determine the maximum De Minimis amount that may be claimed. The total % of all materials claimed as part of the De Minimis must be less than or equal to 5%.
 - The BABA Compliance Metrics section on the BABA Reporting Page in TDA-GO completes all these calculations for you.
 - TxCDBG Grant Recipients are not required to submit BABA documentation for materials claimed as part of the De Minimis.
- **Project-/Product-Specific Waiver**
 - If a Grant Recipient has applied both above waivers to their project and still wishes to not provide BABA reporting for additional materials, one of the three Project-/Product-Specific Waivers may be requested by following the process outlined in the *“How to Request a Project-/Product-Specific Waiver”* section below.
 - Types of Project-/Product-Specific Waivers:
 - **Nonavailability Waiver:**
 - May be requested if the types of iron, steel, manufactured products, or construction materials required for the project are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.
 - **Unreasonable Cost Waiver:**
 - May be requested when the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.
 - **Public Interest Waiver:**
 - May be requested if the use of American made products would be inconsistent with the public interest. Grantees should explain how waiving the BABA requirement for the project or product will serve the public interest and demonstrate definite impacts on the community if specific materials are not utilized in an infrastructure project to support this waiver type.
 - **As a Note:**
 - As of January 2025, TDA has not seen any waiver applications approved for projects similar to TxCDBG funded projects. Submitting a waiver application does not guarantee approval.
 - Any project delays due to the waiver process will not be considered for proposed Grant Agreement extensions.
 - **Per HUD and OMB, project-/product-specific waivers will not be approved retroactively for materials that have already been purchased or incorporated into a project.**

How to Request a Project-/Product-Specific Waiver

Process:

- Fill out Form A400 to calculate the De Minimis limit and ensure that flexibility is fully applied to the materials used in the project that cannot be procured from domestic manufacturers.
- Determine the type of waiver to be requested.
- Complete the necessary market research to support the need for a waiver. (See next section.)
- Collect the required information to submit the waiver request to TDA. (See next section.)
- Submit to your TDA Grant Specialist a notarized letter addressed to the TxCDBG Director which includes all the required information as specified in the next section.
- TDA will review the information provided, contact the Grant Recipient if additional information is needed, and submit to HUD if deemed appropriate.
- HUD will review the waiver application and contact TDA if additional information is needed to validate the need for a waiver.
- If an application is approved by HUD, the proposed waiver will be posted in the Federal Register for a minimum 15-day public comment period and then submit the request to the Made In America Office (MIAO) at the Office of Management and Budget (OMB).
- The MIAO will review the proposed waiver and public comments for final approval and communicate a final decision to HUD which will communicate it to TDA who will then notify the Grant Recipient.

Required Information to Submit a Waiver:

- Per HUD's requirements, the following information is required to submit a waiver application. Please ensure all this information is included in your letter to the TxCDBG Director. If you have not included all the required information, TDA will reject your request.
 - Market research supporting the need for a waiver;
 - Market research may be completed by the contractor who is purchasing the materials to be incorporated into the project.
 - Sufficient market research should include one or more of the following:
 - Document the report showing results of supplier scouting services provided by the [NIST MEP](#), or similar supplier scouting service.
 - Document that the purchaser has made a good faith effort to contact a minimum of three (3) manufacturers or suppliers to determine if a BABA-compliant material is available in sufficient quantity and satisfactory quality. This documentation should include the following:
 - PDF files or screenshots of Internet searches; and
 - Email communications; and
 - Documentation of phone conversations that notes the date and time of the call, the phone number, the contact person with whom the purchaser spoke, and a summary of the information received.
 - Detailed description of the project and location;
 - List of all Federal Agencies funding the project;
 - If any Federal Agencies besides HUD are co-funding the project, please include the Federal Agency's name, Office, Program, and Contact Information.
 - Total sources and amounts of funding, including federal and non-federal shares;
 - Total estimated project costs, including federal and non-federal shares;
 - A listing of the material, technical specification, and quantity;

- HUD requires the name of the iron or steel item, manufactured product, or construction material proposed to be excepted from BABA requirements, including name, cost, countries of origin, relevant [Product Service Code \(PSC\)](#), and [North American Industry Classification System \(NAICS\) code](#).
- **As a note:** if you have multiple products you would like HUD to review, a waiver application must be submitted for each product.
- Waiver type requested;
 - **Nonavailability Waiver:**
 - If applying for a Nonavailability Waiver, responses to the following are required:
 - A description of the due diligence performed by the applicant, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided.
 - In the instance that the lead time to obtain a BABA compliant item is excessive, please attach documentation which indicates:
 - The sum of the project cost and product that was identified;
 - The cost differential between the BABA compliant product and the Non-BABA compliant product that increases the overall project cost to be above the threshold of 25%; and
 - Any quality or quantity issues that were interfaced in the BABA compliant process.
 - **Unreasonable Cost Waiver:**
 - If applying for an Unreasonable Cost Waiver, responses to the following are required:
 - What is the additional cost of the BABA compliant item, compared to using iron and steel, manufactured products, and construction materials of non-domestic or unknown origin?
 - Please demonstrate how the BABA compliant item increases the total project cost by more than 25 percent.
 - Attach documentation of prices for BABA compliant and non-compliant items for the cost comparison.
 - **Public Interest Waiver:**
 - If applying for a Public Interest Waiver, responses to the following are required:
 - Explain how waiving the BABA requirement for this project or product serves the public interest.
- Provide any additional information for HUD's consideration of the requested waiver;
- Identify any anticipated impacts if no waiver is issued;
- Include the following language at the end of the waiver application letter to certify that the Grant Recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor;
 - **"I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct.**
WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. §3729, 3802)."
- Signed by the Authorized Official; and
- Notarized by a notary public.