



Texas Department of Agriculture  
 Texas Community Development Block Grant Program  
 PO Box 12847  
 Austin, TX 78711

# POLICY ISSUANCE

## CDBG 23-01

Effective Date: December 1, 2023

**SUBJECT: New Federal Requirements – BABA and VAWA**

**BACKGROUND:**

Beginning in Program Year 2023, TxCDBG Grant Recipients must comply with two new federal requirements. For those grants to which these requirements apply, a special condition is included in the grant agreement.

The U.S. Department of Housing and Urban Development (HUD) is developing guidance in order to implement both new requirements. TDA will continue to monitor this guidance and update the TxCDBG Project Implementation Manual (Manual) as needed.

**Buy America Preference**

2023 TxCDBG Grant Recipients must comply with the Buy America, Build America Act (BABA). HUD has provided a phased implementation schedule for various materials to be required to comply with BABA. The current Manual accelerates this schedule to apply BABA requirements consistently for all applications in the 2023-2024 grant cycle. Based on the federal guidance to date, TDA has determined that adhering more closely to the HUD schedule will benefit Grant Recipients. This means that grants awarded in Program Year 2024 will be required to provide documentation of compliance with BABA for a more expansive list of materials.

**ACTION:** The TxCDBG Project Implementation Manual is modified to reflect the most current federal guidance and TxCDBG implementation instructions to Grant Recipients:

- Chapter 4 – Grant Agreement Special Conditions
- Chapter 10 – Civil Rights Requirements
- Form A1025 – VAWA Certification
- Appendix B - Required Contract Provisions
- Appendix F - Sample Construction Bid Packet
- Appendix G - Sample Material Bid

**IMPLEMENTATION:** This policy issuance is effective immediately. The grants to which the new federal requirements apply are currently in the pre-agreement period and may proceed with certain administrative and/or engineering tasks in compliance with all federal, state, and program requirements.

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Suzanne Barnard, State Director  
 Texas Community Development Block Grant Program  
 Texas Department of Agriculture

## Special Condition Language

Grant agreements issued in Program Year 2023 contain the following language:

9. Grant Recipient must comply with the requirements of the Build America, Buy America Act (BABA), 41 USC ch. 8301 note, and all applicable rules and notices, as may be amended, if applicable to Grant Recipient's infrastructure project. Any funds obligated under this Agreement are subject to BABA requirements as described in Chapter 4 of the TxCDBG Project Implementation Manual, unless excepted by a waiver.

10. In addition to the documentation required by Chapter 2 of the Project Implementation Manual, funds awarded under this Agreement will not be disbursed to Grant Recipient until these special conditions are met. Grant Recipient shall submit to the department a certification of compliance with the requirements of the Violence Against Women Act Reauthorization of 2022 and the Right to Report Crime and Emergencies from One's Home, confirming that no ordinances, local regulations, or policies adopted by the local government and currently in effect contain any financial or regulatory penalty imposed on property owners or residents as a result of any use of emergency services as required by TxCDBG Policy Issuance 23-01.

## Chapter 4 – Grant Agreement Special Conditions

Section 4.1.7 Buy America Preference is replaced in its entirety with the following:

### 4.1.7 Buy America Preference

Pursuant to the Buy America, Build America Act (BABA), Grant Recipients that are awarded funding for infrastructure projects beginning in Program Year 2023 must ensure that the required items used in the project are produced in the United States. HUD's phased implementation will apply BABA documentation requirements to additional items each year – new grant awards must comply with the BABA requirements applicable to the period in which they are awarded.

<b>Item Description.</b> <sup>1 2</sup>	<b>BABA Requirements Apply to New Awards Beginning</b>
All iron and steel	9/1/2023
Specifically listed construction materials: a. Metals other than iron or steel (non-ferrous metals), b. Lumber, c. Composite building materials, and d. Plastic and polymer-based pipe and tube materials, including PVC pipe.	9/1/2024
All construction materials and manufactured products.	9/1/2025
Items not applicable for BABA documentation: a. Tools, equipment, and supplies, such as temporary	n/a

<sup>1</sup> White House Memorandum M-22-11

<sup>2</sup> [HUD Public Interest Phased Implementation Waiver](#)

<p>scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project;</p> <p>b. Equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project</p> <p>c. Purchases that are not intended for construction, alteration, maintenance, or repair of infrastructure.</p>	
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The Buy America preference applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. [An item meets BABA requirements if:](#)

- Iron and steel - all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- Construction materials and manufactured products –
  - the item was manufactured in the United States; or
  - the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; or
  - the components of the manufactured product meets another standard for determining the minimum amount of domestic content of the manufactured product established under applicable law or regulation.

The Grant Recipient must provide an itemization to identify the products, quantities, and costs as support documentation.

- The bid tab [must be sufficiently detailed to itemize each separate product or material and indicate BABA applicability, OR a separate schedule must be attached to identify BABA applicability for all products or materials.](#)
- [If a change to the contract includes new products or materials, and updated itemization must be submitted with the change order.](#)

Documentation of BABA compliance must be provided for a minimum of 95% of all iron, steel, manufactured products, and construction materials used in the project, [according to the phased implementation schedule](#). TDA has not received guidance as to the documentation necessary to support the Buy America status of the project. Until further guidance is provided, the Grant Recipient must provide written evidence from the manufacturer or supplier that:

- Identifies the item purchased;
- Affirms the location of manufacture as within the United States; and
- If signed by an authorized company representative.

In rare instances, a BABA waiver may be available. To request such a waiver, the Grant Recipient must provide a letter to the TxCDBG Director requesting a BABA waiver, citing the relevant exception, and providing a narrative justification and any supporting documentation for how the exception applies to the project. NOTE: TDA does not have the authority to waive BABA requirements; all requests for waivers will be evaluated by TDA and, if applicable, forwarded for review and potential approval by both HUD and the Office of Management and Budget. **Any project delays due to the waiver process will not be considered for proposed Grant Agreement extensions.**

## **4.2.9 Violence Against Women Act Certification**

Pursuant to the *Violence Against Women Act Reauthorization of 2022*, the Grant Recipient must certify that local policies do not interfere with the residents' Right to Report Crime and Emergencies from One's Home. The certification will confirm that no ordinances, local regulations, or policies adopted by the local government and currently in effect contain any financial or regulatory penalty imposed on property owners or residents as a result of any use of emergency services, or that the Grant Recipient is actively addressing such local regulations.

Form A1025 must be submitted with Group A documentation, as described in Chapter 2 Financial Management – no grant funds will be disbursed until this documentation is provided.

## **Chapter 10 – Civil Rights Requirements**

Section 10.1.9 VAWA Certification is revised as follows:

### **10.1.9 VAWA Certification**

The Violence Against Women Act (VAWA) Reauthorization Act of 2022, which became effective October 1, 2022, includes a new requirement for Grant Recipients to support an individual's, including survivor's, right to seek law enforcement or emergency assistance. TxCDBG grants awarded on or after the effective date will be required to:

1. "Report any of their laws or policies, or, as applicable, the laws or policies adopted by subgrantees, that impose penalties on landlords, homeowners, tenants, residents, occupants, guests, or housing applicants based on requests for law enforcement or emergency assistance or based on criminal activity that occurred at a property; and
2. Certify that they are in compliance..." with the VAWA requirements.

[See Chapter 4 Special Conditions for additional details.](#)

~~As of the publication of this Manual, HUD has not provided guidance for this review and certification. Once issued, TDA will provide a Policy Issuance and sample certification.~~

### Violence Against Women Act (VAWA) Certification

**Grant Recipient:** \_\_\_\_\_

As Civil Rights Officer, I certify that the Grant Recipient is in compliance with the Violence Against Women Reauthorization Act of 2022.

The Grant Recipient has reviewed its ordinances, local regulations, and policies (collectively referred to as “policies”) adopted by the local government and currently in effect, with the following results:

- No policies were identified that contain any financial or regulatory penalty imposed on property owners or residents as a result of any use of emergency services.
- Or
- The following policies were identified that may contain financial or regulatory penalties imposed on property owners or residents as a result of any use of emergency services.

Policy	Purpose of policy	Financial or regulatory penalty (or potential penalty)

The Grant Recipient commits to re-evaluating and addressing any policies identified above as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The Grant Recipient understands that any policies identified above must be re-evaluated and addressed within the grant agreement period.

- A summary of efforts to evaluate alternative policies that do not impede the Right to Report Crime and Emergencies from One’s Home and a timeline for action on one or more alternatives must be submitted prior to the release of grant funds for construction.
- The timeline for implementation of alternative policies is subject to TDA review and approval; grant funds will be placed on hold if the Grant Recipient fails to comply with the requirements of this VAWA certification.

\_\_\_\_\_  
Name of Civil Rights Officer

\_\_\_\_\_  
Date policy review completed

\_\_\_\_\_  
Signature of Civil Rights Officer

\_\_\_\_\_  
Date of Certification

## Appendices B, F, and G

The Materials and Workmanship section of each sample contract is revised as follows – the Grant Recipient must select the appropriate language to reflect the items required by the phased implementation schedule:

### X. Materials and Workmanship

...

- (x) Domestic Preferences - As appropriate and to the extent consistent with law and to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- (3) [Iron and steel products, Manufactured Products, and Construction Materials] used in this project comply with the Build America, Buy America Act (BABA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 117-58.