



## Guidance on Submission of a DOE Project-Specific Buy America Requirement Waiver Request

DOE may waive the application of a Buy America Requirement under a project/award in any case in which it determines that:

1. Applying the domestic content procurement preference would be inconsistent with the public interest (“**Public Interest waiver**”);
2. The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (“**NonAvailability waiver**”); or
3. 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 (“**Unreasonable Cost waiver**”).

Requests to waive the application of the Buy America Requirement in an award must be submitted by the Prime Recipient in writing to the CO in accordance with the terms and conditions of the award.

Requests to waive the Buy America Requirement in an award must include the following:

- Waiver justification type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential to the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including a description of the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient in an attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and

- A description of the market research performed. This must include relevant details, including who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research.
- Anticipated impact to the project if no waiver is issued.

The Prime Recipient should consider using the following principles as minimum requirements contained in their waiver request:

- **Time-limited:** Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“nonavailability”) has not changed (e.g., domestic supplies have become more available).
- **Targeted:** Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- **Conditional:** The recipient may request a waiver with specific conditions that support the policies of the Build America, Buy America Act of the Infrastructure Investment and Jobs Act and Executive Order 14017.

DOE may request, and the Prime Recipient must provide, additional information for consideration of a submitted waiver. Waiver requests may take up to 90 calendar days to process.

Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public.

DOE's final determination regarding approval or rejection of the waiver request may not be appealed.

Recipients should reach out to the cognizant DOE Contracting or Grants Officer with questions concerning the application of the Buy America Requirement included in an award or requests to waive the Buy America Requirement included in an award.