ARC RSBA MANUAL

Build America, Buy America (BABA)

How to Implement the Buy America Preference in State-Administered ARC Construction Grants

A Practical Implementation Manual for Registered State Basic Agency (RSBA) Staff

Appalachian Regional Commission

⚠ A quick note before you start

- This manual assists Registered State Basic Agencies (RSBAs) with administration of BABA for ARC-funded construction projects.
- This is a practical guide, not the law itself. It does not replace any contractual provisions or the official ARC BABA Guidance.
- If anything here seems to conflict with the ARC BABA Guidance, the ARC Guidance controls.

Contents

Overview

The Build America, Buy America Act (BABA) is a federal law. It says that when the federal government helps pay for a public infrastructure project, the iron, steel, manufactured products, and construction materials built into that project must be made in the United States. The goal is to strengthen American manufacturing and build stronger domestic supply chains.

BABA applies to ARC-funded construction projects. ARC cannot release grant money for a construction project unless all of the iron, steel, manufactured products, and construction materials used in it are produced in the United States, or a waiver applies.

> **ℹ Two points that are easy to miss**
> - BABA does not expire.
> - BABA applies to the whole project even if ARC pays for only part of it.

Who should read this

Registered State Basic Agencies responsible for administering ARC grants for construction projects.

> **ℹ The fundamental objective of this manual**
> - This document is a working tool for RSBA staff to implement the ARC BABA Guidelines: to administer state-run ARC construction grants, guide and monitor Grantees, keep an audit-ready compliance record, and manage waivers correctly from request through to the Made in America Office and back.

1. General Information

1.1 How to use this manual

This manual pulls together the main laws, regulations, and OMB guidance that make up the Buy America Preference for ARC construction grants, and it explains them in everyday language. Use it as a working tool while you administer the ARC grant.

Keep two things in mind. First, this manual is a general guide, not a complete statement of the law. Second, every project is different, so you must apply the rules to the specific circumstances of the project. When you need the exact legal wording, go to the source — the ARC website, the ARC BABA Guidance, or the OMB BABA regulations. Alternatively, consult with ARC to resolve remaining doubts or questions. That is, if you still have questions about a specific project or grant decision, contact the ARC project coordinator. Note that the **Frequently Asked Questions** also answers common questions that may assist RSBAs and Grantees.

1.2 When this manual applies

This version follows the ARC BABA Guidance and the OMB BABA regulations. It applies to awards approved by the ARC on or after August 1, 2026. For awards approved before that date, the earlier *ARC Interim BABA Guidance* still applies.

1.3 Early planning

Early planning can prove to be the single most important step for BABA compliance. Because BABA controls the iron, steel, manufactured products, and construction materials that go into a project, with the assistance of the RSBA, Grantees should consider sourcing while still designing the project — including before applying for the grant. Choices made about design, product selection, buying strategy, and scheduling may affect whether they can meet BABA without expensive changes later.

Planning also makes the budget more realistic. Domestic products can differ from foreign ones in price, availability, lead time, and shipping. If U.S. suppliers and preliminary pricing are identified early, Grantees can build the true cost of compliance into the project's budget. Those costs may include higher material prices, redesign or engineering work, supplier research, compliance paperwork, and extra time for domestic manufacturing.

Planning early also allows identifying products that may be hard to source domestically, checking whether an existing general waiver already covers them, and deciding whether the project may need a project-specific waiver. The **Planning Checklist** is built for exactly this purpose.

1.4 Key terms

These terms appear throughout the manual. Plain-language explanations are given here; the exact legal definitions are on the ARC website and in the ARC BABA Guidance.

ARC BABA Guidance: ARC's official guidance on applying the Buy America Preference to infrastructure grants, issued August 1, 2026.

ARC BABA Waiver: A written decision by ARC that allows the use of certain materials that do not meet domestic-content rules for a specific project or class of projects. ARC may grant one only when a legal waiver ground is met (public interest, nonavailability, or unreasonable cost). A waiver only covers what its written terms say. A waiver from another agency does not apply to an ARC award unless ARC provides so in writing.

Buy America Preference: The domestic-content buying preference set by Section 70914 of BABA.

Component: An item built directly into a manufactured product or an iron or steel product.

Construction materials: A defined list: non-ferrous metals; plastic and polymer-based products (including PVC and composites); glass; fiber optic cable; optical fiber; lumber; engineered wood; and drywall. Minor add-ons or binders do not change the category.

Grantee (Recipient): The entity awarded ARC financial assistance.

Infrastructure: Public infrastructure that serves a public function — roads, bridges, transit, water and wastewater systems, broadband, energy facilities, buildings, and more. The list is broad, not exhaustive.

Iron and steel: Items made wholly or mostly of iron or steel — meaning iron and steel make up more than 50% of the total cost of all components.

Made in America Office (MIAO): An office inside the U.S. Office of Management and Budget (OMB) that reviews waiver requests, promotes consistent rules across agencies, and publishes approved waivers. The MIAO reviews waivers; it does not issue ARC's waivers — ARC does.

Manufactured products: Items processed into a specific form, or combined with other items to create something with new properties. If an item is iron/steel, a construction material, or a Section 70917(c) material, it is not a manufactured product.

Produced in the United States: The core test, which differs by category (see Section 4).

Section 70917(c) materials: Cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binders or additives. These are generally not covered by BABA.

2. BABA Resources

These are the primary sources:

- **ARC BABA Guidance** — posted on the ARC website (see www.arc.gov). Contact: BABA@arc.gov
- **ARC BABA Manual for Grantees on Implementation of the Buy America Preference in ARC Grants for Construction Projects** — posted on the ARC website (see www.arc.gov).
- **OMB BABA regulations, 2 CFR Part 184:** ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184
- **Uniform Guidance, 2 CFR Part 200:** ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200
- **Made in America Office waiver site:** madeinamerica.gov/waivers

3. Who Is Responsible for BABA

BABA duties reach everyone on the project, but the way they reach each party is different. The table below shows who does what.

Party	Main BABA responsibility
ARC	Makes sure no ARC construction grant is awarded without meeting BABA. Puts the Buy America Preference in the grant agreement (award), supports RSBAs with compliance, and issues ARC BABA waivers (coordinating with OMB's Made in America Office).
Registered State Basic Agency (RSBA)	Runs state-administered ARC grants under agreement with ARC. Oversees compliance and documentation, handles waiver requests, monitors the project (including site visits), and reports to ARC. Addresses BABA questions first.
Grantee	Works with the RSBA to make sure all materials meet domestic-content rules, passes BABA requirements down into every subaward and contract, keeps documentation, and supports audits and reviews.
Subrecipients	Work with the RSBA on compliance and records, must follow waiver rules, and must pass BABA down to their own contractors and suppliers. (See **Subrecipient's Certification of Compliance**.)
Contractors & subcontractors	Architects, engineers, and construction and procurement firms must comply and pass requirements down to their subcontractors and suppliers, and certify compliance. (See **Contractor's Certification** and **Subcontractor's Certification**)

Party	Main BABA responsibility
Suppliers & manufacturers	Must understand BABA standards and provide the certifications and documents that prove compliance. (See **Supplier's/Manufacturer's/Steel Mill's Certification**.)

The big idea: "flow-down"

ARC does not have a direct contract with subrecipients, contractors, or suppliers. Instead, under the supervision and oversight of the RSBAs, BABA duties "flow down" to them through the terms in subawards and contracts. That is why including the ARC BABA term and condition in every subaward, contract, subcontract, bid document (including project specifications) and purchase order, followed by certifications of BABA compliance, is important — it is how the rule reaches everyone doing the work. See **Section 4**.

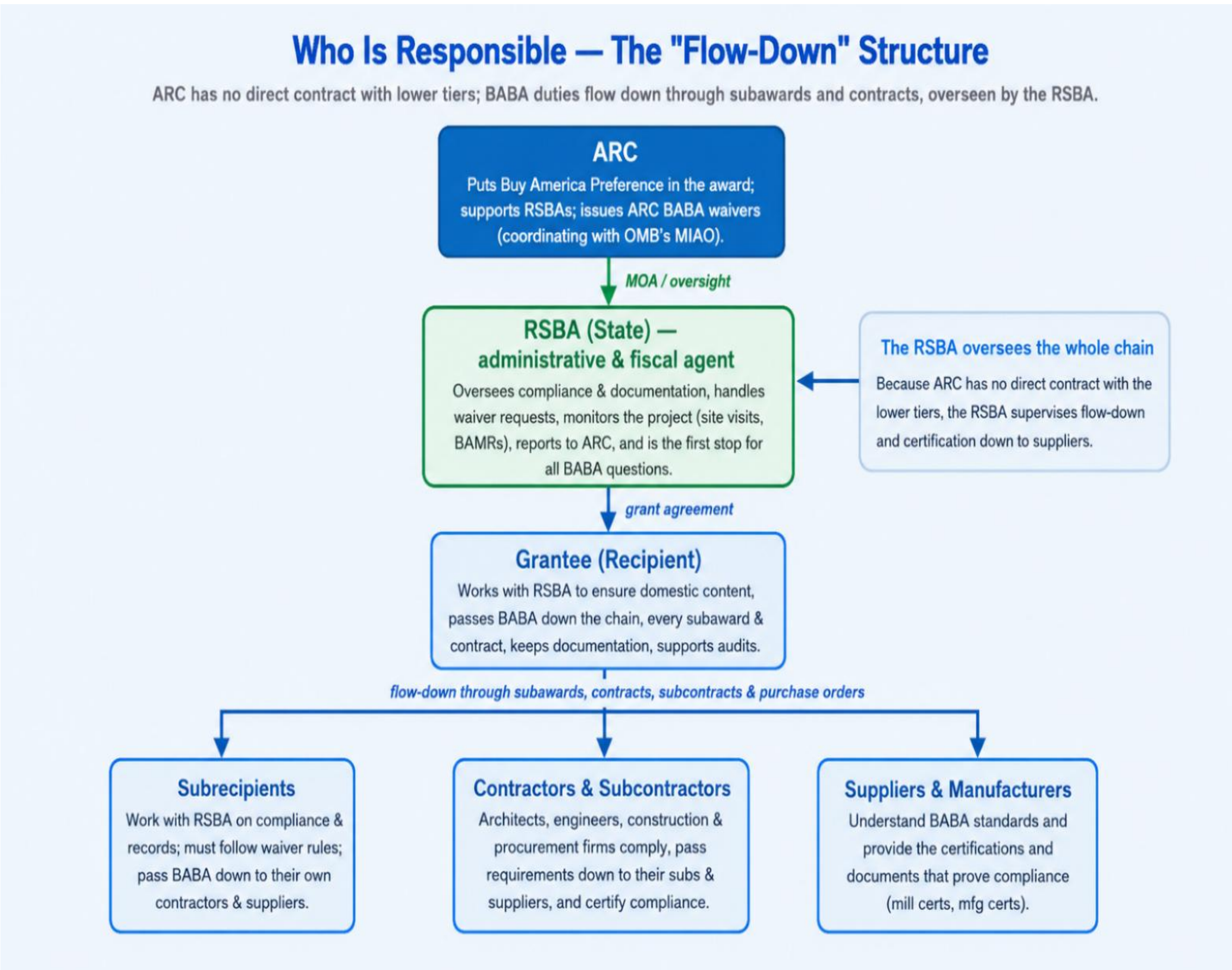

Figure 1. The "flow-down" structure of BABA responsibility, overseen by the RSBA.

4. Building BABA Into an Award

4.1 The required Buy America term and condition

Every ARC construction award must include the Buy America Preference in its terms and conditions, and it must be included in all subawards, contracts, subcontracts, bid documents (including project specifications) and purchase orders. The standard language below (the ARC BABA term and condition) is what must appear and flow down.

ℹ ARC BABA term and condition (standard language)

Buy America. General. None of the ARC funds provided under this grant award may be used for a project for infrastructure unless:

(1) all iron and steel used in the project are produced in the United States — this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(2) all manufactured products used in the project are produced in the United States — this means the manufactured product was manufactured in the United States; and 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 as defined in 2 CFR 184.5, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

(3) all construction materials (excluding cement and cementitious materials, aggregates such as stone, sand, or gravel or aggregate binding agents or additives) are manufactured in the United States — this means that all manufacturing processes for the construction material occurred in the United States as defined in 2 CFR 184.6.

Incorporation into an infrastructure project. The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. It does not apply to tools, equipment, or supplies such as temporary scaffolding that are brought to the site and removed before completion, or to movable equipment and furnishings such as chairs, desks, and portable computers that are used in the finished project but are not integral or permanently affixed.

Categorization of articles, materials, and supplies. Each article, material, or supply must be classified in only one category: iron or steel products, manufactured products, construction materials, or Section 70917(c) materials. Classification is based on the item's status when brought to the work site for incorporation into the project, and the Buy America preference applies only to the single category in which it is classified.

Waivers. A waiver on the application of the domestic content procurement preference (Buy America) may be available to the ARC grantee when one of the following exceptions are present: (a) the domestic content procurement preference is inconsistent with the public interest; (b) 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; or (c) the inclusion of iron, steel, manufacture products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. The Grantee will request the domestic content procurement preference (Buy America) waiver in writing and according to the instructions, format, content, and supporting materials described in the ARC Buy America website, available at https://www.arc.gov/resource/arc-baba-guidance/, Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

Definitions. Definitions for the terms used in this Article may be found on the ARC Buy America website, available at http://www.arc.gov/BuyAmericaGuidelines. The definitions on the ARC Buy America website are hereby incorporated by this reference.

4.2 Building BABA into the project, start to finish

RSBAs should work with Grantees to build BABA into every stage of the project, including obtaining all needed certifications and documenting compliance, from the first design to final closeout.

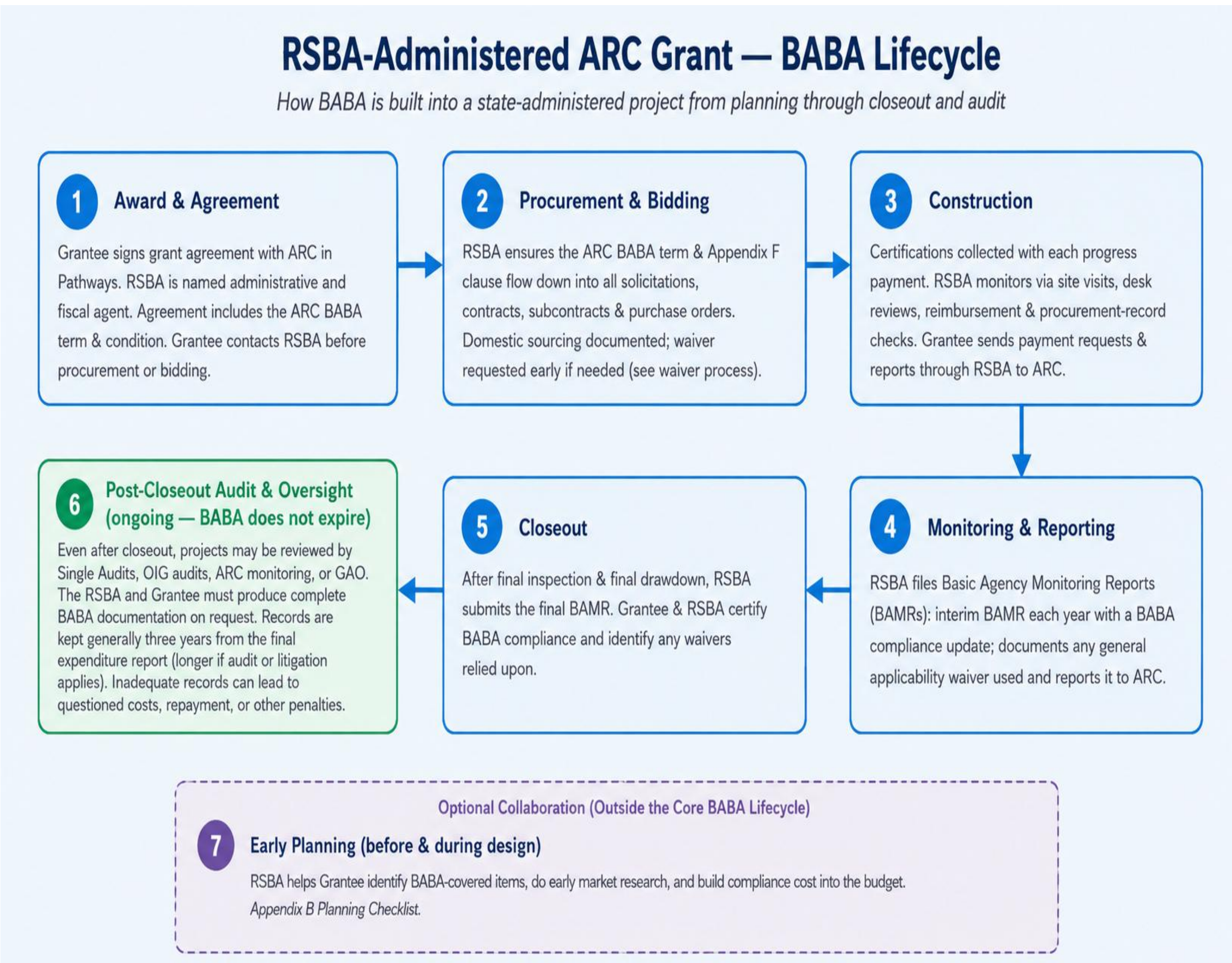

Figure 2. BABA across the life of a state-administered ARC grant.

If an RSBA (state) administers the grant

After ARC approves the grant, the Grantee signs a grant agreement with ARC in Pathways. An automatic email then tells everyone, including the RSBA contact and the ARC State Program Manager, that the grant is open. From then on, the Grantee receives payments from the RSBA and the RSBA is responsible for working with the Grantee on progress reports. The grant agreement with ARC names the RSBA as the administrative and fiscal agent, includes the ARC BABA term and condition, and describes the Grantee's duties, including providing supporting documents with each payment request.

The grant agreement directs the Grantee to contact the RSBA before proceeding on the project — such as procurement or bidding — and to comply with BABA pursuant to the ARC BABA Guidance and the ARC Grantee BABA Manual through procurement, bidding, construction, and after completion. RSBAs may also enter into a separate agreement with the Grantee based on the RSBA's procedures.

> **⇄ RSBA ↔ Grantee: Award and start-up**
>
> - On award, the Grantee signs the ARC grant agreement in Pathways; the RSBA is named administrator and the ARC BABA term and condition is included.
> - The Grantee must contact the RSBA before project activities including procurement or bidding.
> - The RSBA then pays the Grantee and works with it on progress reports; the RSBA may also sign a separate agreement with the Grantee under its own procedures.

How the RSBA monitors the project

The RSBA will follow the ARC BABA Guidance and this manual in administering ARC funded projects. Accordingly, the RSBA makes sure Grantees' use of ARC funds follows the terms and conditions in the grant agreement with ARC, the ARC BABA Guidance and the ARC Grantee BABA Manual, along with all other applicable rules. The RSBA helps Grantees start work on time, resolves BABA questions and problems, assists with BABA waiver requests and waiver implementation, and monitors compliance — including through site visits, documentation, and required Basic Agency Monitoring Reports (BAMRs).

Project administration duties

The RSBA assists Grantees with contracting and the day-to-day running of the project. Grant issues may be handled by the RSBA, unless law, ARC policy or the grant award terms and conditions require ARC intervention. Payment requests, and BABA-related reports, amendment requests, and anything needing ARC approval go to the RSBA, then to ARC.

RSBAs help assure flow-down of BABA requirements, including to subrecipients, contractors, and suppliers, who are bound through subawards and contracts. All parties involved must supply compliant materials, hand over origin certifications or documents when asked, and cooperate with any audit or verification. Flow-down includes putting the ARC BABA term and condition in all subawards, contracts, subcontracts, bid documents (including project specifications) and purchase orders. As further explained below, once these are in place, the subrecipients, contractors, subcontractors and suppliers must issue certifications of BABA compliance.

⇄ RSBA ↔ Grantee: Monitoring and administration

- The RSBA is the Grantee's single point of contact — all grant questions, payment requests, reports, amendment requests, and anything needing ARC approval flow through the RSBA to ARC.
- The RSBA monitors compliance through site visits, desk reviews, documentation checks, and BAMRs.
- The RSBA helps the Grantee assure flow-down and collect certifications from every downstream party.

Compliance certifications

To document BABA compliance, the RSBA and Grantee must create and maintain a progressive chain of certifications that develops concurrently with procurement and construction rather than being assembled after project completion. Each participant in the supply chain creates or transmits the documentation it is uniquely positioned to provide, and each downstream participant relies on — but should not alter) the upstream certifications. By project closeout, the RSBA and Grantee should possess a complete documentary record that traces every BABA-covered item from the original domestic manufacturer (or domestic mill, where applicable) through each commercial transaction to installation in the ARC-funded project.

To aid the RSBA in monitoring BABA compliance, **BABA Compliance Project Certifications** provides a detailed explanation of the BABA certification requirements, processes, and how certifications should flow for each project. As reflected in **BABA Compliance Project Certifications**, the RSBA and Grantee must keep records and oversee compliance the entire time covered iron and steel, construction materials, and manufactured products are going into the project. If a waiver is involved, the RSBA and Grantee must follow the ARC BABA waiver rules in Section 5. Part of monitoring is collecting compliance certificates from the parties on the project. The following templates in the appendices can be adapted to each project:

- **Sample contract clause / contractor bid language**
- **Subrecipient's certification of compliance**
- **Contractor's certification of compliance**
- **Subcontractor's certification of compliance**
- **Supplier's / manufacturer's/steel mill's certification of compliance**

Contractor and supplier certificates should be provided to the Grantee and the RSBA with each monthly progress payment application, or whenever a new batch of covered material arrives at the jobsite.

⇄ RSBA ↔ Grantee: Building the certification record

- The RSBA and Grantee build the certification chain progressively as procurement and construction proceed — not at closeout.
- The Grantee collects certifications from all parties ((**Certification of Compliance –** (**Subrecipient**, **Contractor**, **Subcontractor**, **Supplier/Manufacturer/Steel Mill**) and delivers contractor and supplier certificates to the RSBA with each monthly progress payment or whenever new covered material arrives on site.

- The RSBA and Grantee together hold the official, audit-ready compliance file (**BABA Compliance Project Certifications**).

BABA compliance checklist

Working with the Grantee, the RSBA must ascertain compliance with the following requirements:

1. Make sure no ARC grant funds pay for a construction project unless all iron and steel, manufactured products, and construction materials subject to BABA are produced in the United States (see Sections 4.4–4.6 for what each term means).
2. Factor BABA compliance into project design and budget (see Section 1.3).
3. Ascertain that procurement follows the Buy America Preference, including keeping records that show domestic sourcing (see **BABA Compliance Project Certifications**) or a written **ARC BABA waiver** (see Section 5) for the item.
4. Include the ARC BABA term and condition and the **Sample Contract Clause and Bid Language** in all specifications, solicitations, and contracts.
5. Require the compliance certifications (**Certification of Compliance – (Subrecipient, Contractor, Subcontractor, Supplier/Manufacturer/Steel Mill**) in all subawards and contracts, delivered to the Grantee and the RSBA before final closeout. Work with the RSBA to monitor subrecipients and to process any waiver requests.
6. Document in the project file whenever a general applicability waiver is used and report it to ARC in the BAMR.
7. Submit project-specific waiver requests promptly using the **ARC BABA Waiver Request Form**. Note: a waiver cannot cover costs already incurred before its effective date.
8. Keep documentation that proves compliance — verify before and at the time of incorporation, collect manufacturer self-certification letters, and retain records to satisfy audits.
9. Address all BABA questions, concerns, and problems.

RSBA Monitoring Reports (BAMRs)

The RSBA is required to include a BABA compliance update in the interim and final BAMRs. The RSBA must retain all applicable BABA compliance documentation on file.

Audit and oversight

Even after closeout, a project can be reviewed through ARC monitoring, ARC Office of Inspector General (OIG) audits, Single Audits, Government Accountability Office reviews, or other federal oversight. The RSBA must support these reviews and produce all supporting BABA documentation upon request.

4.3 EPC/S and project management contracts

Sometimes a third party — an Engineering, Procurement and Construction/Service (EPC/S) contractor or a project management contractor — oversees the work. These firms are often on the front line and can watch BABA compliance as materials go in. The RSBA overseeing the project must validate that the Grantee, and any subrecipient includes the ARC BABA terms and conditions and all BABA requirements into the scope of EPC/S contracts.

4.4 What counts as iron and steel

An item is an iron or steel product if it is made wholly or mostly of iron or steel — that is, if iron and steel make up more than 50 percent of the total cost of all its components — and it is permanently built into the project. Examples include structural steel, rebar, beams, columns, plate, and pipe. For these items, all manufacturing processes, from the initial melting stage through coating, must occur in the United States (except for certain metallurgical additives).

This is the strictest BABA standard because it covers nearly every manufacturing step, not just the final one. Getting the category right matters: if an item is not mostly iron or steel, it may instead be a manufactured product or a construction material, which have different tests. Classifying correctly is the first step to applying the right standard. Because this category has unique statutory and regulatory requirements that differ significantly from the other categories, it should be evaluated first.

4.5 What counts as construction materials

Whether something is a "construction material" depends on the legal definition, not on everyday industry usage. The term includes only these categories: non-ferrous metals; plastic and polymer-based products (including PVC, composites, and polymers in fiber optic cables); glass (including optic glass); fiber optic cable (including drop cable); optical fiber; lumber; drywall; and engineered wood. Minor add-ons or binders do not change the category.

But if two or more of these are combined through manufacturing, or one is combined with a non-listed material through manufacturing, the result is usually a manufactured product, not a construction material. For example, plate glass is a construction material, but a plastic-framed sliding window is a manufactured product. If the listed materials have been made into a distinct product with a specific function — like a pump or an HVAC unit — it is a manufactured product.

For construction materials, BABA requires that all manufacturing processes for that category happen in the United States. Unlike manufactured products, there is no component-cost test. Unlike iron and steel, there is no "from initial melting" requirement.

4.6 What counts as a manufactured product

A manufactured product is an item made through a manufacturing process and permanently built into the project, but that is not an iron or steel product or a construction material. It has been processed into a specific form, or combined with other items, to create something with new properties. To meet BABA, a manufactured product must be manufactured in the United States and meet the applicable domestic-component-cost test. Common examples: generators, pumps, transformers, switchgear, HVAC equipment, boilers, control panels, and packaged treatment systems.

Kits may count as one manufactured product

A product delivered as a kit — in modular or prefabricated pieces assembled on site — can still count as a single manufactured product, as long as it was manufactured before delivery and works as one unified product. A "kit" is a discrete product, machine, or device with a unified function. A broad system of connected devices (like a whole-building HVAC system) is not a kit, and neither is an entire project.

For the cost-of-components test, the "manufacturer" is the firm that performed the final manufacturing of the kit's components — not the contractor who assembles it on site. So transportation to the site and on-site assembly and installation labor are not counted as manufactured-product costs in the calculation. The RSBA will work with ARC to help the Grantee determine the treatment of kits and the category of products resulting from their application.

⇄ RSBA ↔ Grantee: Classifying kits

- The RSBA works with ARC to help the Grantee determine whether an item is a "kit," and how to categorize the resulting product (e.g., manufactured product vs. construction material).
- On-site assembly labor and transportation to the site are excluded from the component-cost test.

Determining the cost of components

To decide whether U.S.-made components are more than 55 percent of total component cost:

1. **For components the Grantee buys:** the acquisition cost, including transportation to where it is built into the product (whether or not paid to a U.S. firm) and any applicable duty.
2. **For components the Grantee makes:** all costs of manufacturing that component, including transportation as above plus allocable overhead, but excluding profit.

In both cases, do not count the cost of manufacturing the final product itself. See ***Cost of Components – Sample Calculation*** *for a sample calculation.*

4.7 International trade agreements

BABA must be applied consistently with U.S. obligations under international agreements. But those agreements generally do not create an exemption from BABA unless Congress, OMB, or ARC has expressly provided one. Unlike the Buy American Act for direct federal purchasing, BABA has no blanket waiver for products from WTO Government Procurement Agreement or free-trade-agreement countries. So the right order is: classify the item, check whether it meets the domestic-manufacturing test, and only then consider whether an approved waiver applies. If no waiver has been adopted, assume foreign-made materials are still subject to BABA.

Some ARC-grant states have tied their procurement to trade agreements and appear on the relevant schedules. If such a state receives ARC funds, ARC will consider an RSBA request for a public-interest waiver so the state can meet its agreement obligations. For the current list of covered states and entities, see the USTR government procurement page. (That list is maintained by the U.S. Trade Representative, not ARC.)

4.8 Disasters and emergencies

Some emergency and disaster work is excluded from BABA. BABA generally does not apply to assistance authorized under sections 402, 403, 404, 406, 408, or 502 of the Stafford Act tied to a Presidentially declared major disaster or emergency (sections 401 or 501), or to pre- and post-disaster emergency response spending. If the project is funded under a different authority, or is not tied to a qualifying declaration, the exclusion does not apply. See 42 U.S.C. 5122. After an emergency or disaster, always check with ARC before concluding BABA does not apply.

“Emergency” means an occasion for which the President determines federal help is needed to supplement state and local efforts to save lives, protect property and public health and safety, or lessen the threat of a catastrophe.

“Major disaster” means a natural catastrophe (hurricane, tornado, storm, flood, earthquake, and the like), or any fire, flood, or explosion, that the President determines is severe enough to warrant major disaster assistance under the Stafford Act.

5. ARC BABA Waivers

5.1 ARC’s waiver policy

BABA reflects Congress’s goal of strengthening U.S. manufacturing, building resilient supply chains, and creating good jobs. At the same time, Congress recognized that important projects must be able to move forward when domestic sourcing is not feasible. So BABA allows only limited waivers — for public interest, nonavailability, or unreasonable cost — and OMB’s guidance treats waivers as the exception, not the rule. ARC will review waiver requests carefully against the legal standards, so waivers are neither granted so freely that they undermine domestic production, nor withheld so rigidly that they needlessly delay projects.

ARC may reject or grant waivers in whole or in part. Wherever possible, ARC prefers project-level, product-specific waivers, and may narrow a project-level waiver to a single product. When ARC issues a waiver, it follows these principles:

- **Time-limited:** where appropriate, a waiver is limited by time (for example, one to two years) or phased out, so domestic producers gain access to the market as supply becomes available.
- **Targeted:** waivers not tied to a single project apply only to the specific items, products, or materials that are necessary.
- **Conditional:** ARC tries to attach conditions that support BABA’s goals.

ARC waivers apply only to future spending after the waiver’s effective date. A waiver can be granted after an award is made, but it cannot cover costs already incurred for covered items before the effective date.

5.2 Grounds for a waiver

ARC may waive the Buy America Preference on only one of three grounds:

1. **Public interest waiver —** applying the preference would be inconsistent with the public interest.
2. **Nonavailability waiver —** the needed iron, steel, manufactured products, or construction materials are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.
3. **Unreasonable cost waiver —** using U.S.-made materials would raise the overall project cost by more than 25 percent.

If the Grantee reasonably believes one of these applies, it must submit a written waiver request to ARC through the RSBA, following the procedures and documentation rules in the ARC Grantee BABA Manual. Every request must include a detailed justification for using non-domestic goods and a certification that a good-faith effort was made to solicit bids for domestic products.

To the greatest extent practicable, the request should include:

- Waiver type (nonavailability, unreasonable cost, or public interest).
- Recipient name and Unique Entity Identifier (UEI).
- ARC program name and funding amount.
- Total estimated infrastructure expenditures (all ARC and other funds).
- Project description and location (as known).
- The iron/steel items, manufactured products, and construction materials to be excepted — with name, cost, country of origin (if known), and PSC and NAICS codes.
- A description of efforts to avoid needing a waiver (market research, industry outreach, lack of compliant bids).
- Market research details: who did it, when, what sources, and what methods.
- The anticipated impact if no waiver is issued.

BABA waiver requests must be submitted to ARC through the RSBA using the **ARC BABA Waiver Request Form**.

⇄ RSBA ↔ Grantee: Submitting a waiver request

- The Grantee submits a written waiver request to ARC through the RSBA using **ARC BABA Waiver Request Form** — the RSBA is the required channel.
- The RSBA checks the request for completeness and legal sufficiency before forwarding it to ARC.
- Every request needs a detailed justification and a good-faith certification that domestic bids were solicited.

5.3 Market research

Market research is an organized effort to find out whether a compliant domestic product that meets the project's technical needs is available in sufficient quantity, of satisfactory quality, and at a reasonable cost. It does two jobs: it helps the Grantee meet BABA, and it provides the factual basis for a waiver request (usually nonavailability or unreasonable cost). The RSBA should assist the Grantee in conducting market research.

OMB's guidance is clear: the Grantee must do more than simply claim a domestic product is unavailable. The Grantee must show a reasonable, good-faith effort to find compliant domestic sources first. The Grantee must scale the research commensurate to the size and complexity of the purchase. At a minimum, identify potential domestic manufacturers and suppliers; ask about availability, manufacturing location, capabilities, capacity, lead times, and pricing; and document what the Grantee finds. Research can take the form of requests for quotes, online searches, and similar steps.

For a nonavailability waiver, the applicant should contact at least three reliable domestic manufacturers or distributors, review catalogs and product literature, search industry directories and trade associations, review purchasing schedules where relevant, and keep records of all communications.

For an unreasonable cost waiver, applicants must obtain comparable price quotes for both domestic and foreign products meeting the same specifications, state their assumptions, and show that using domestic materials would raise the overall project cost by more than the 25 percent threshold — not just the cost of one item.

Before concluding a waiver is needed, RSBAs and Grantees must consider reasonable alternatives: extending lead times, resequencing work, adjusting specifications, or using a different but functionally equivalent domestic product. OMB has stressed that waivers should not rest on mere preference or convenience when a compliant domestic option is reasonably available.

The RSBA must keep documentation of the market-research— it is the heart of the waiver record. See **Market Research Guide** for detailed market-research methods and examples.

5.4 How ARC processes a waiver request

When ARC receives your request, it checks whether one of the three legal grounds is met and reviews your application and supporting documents — market research, technical analyses, and cost information. If ARC concludes a waiver is justified, it prepares a detailed written explanation of the factual and legal basis.

Before issuing a final waiver, ARC will post the proposed waiver and its justification on a public website, allow a public comment period of at least 15 days (at least 30 days for modifying or renewing a general applicability waiver), and, unless OMB directs otherwise, submit the proposed waiver to OMB's Made in America Office for review. After comments and OMB review, ARC may issue a final waiver. The RSBA and Grantee must keep a complete record of the request, analyses, comments, OMB review, and final decision.

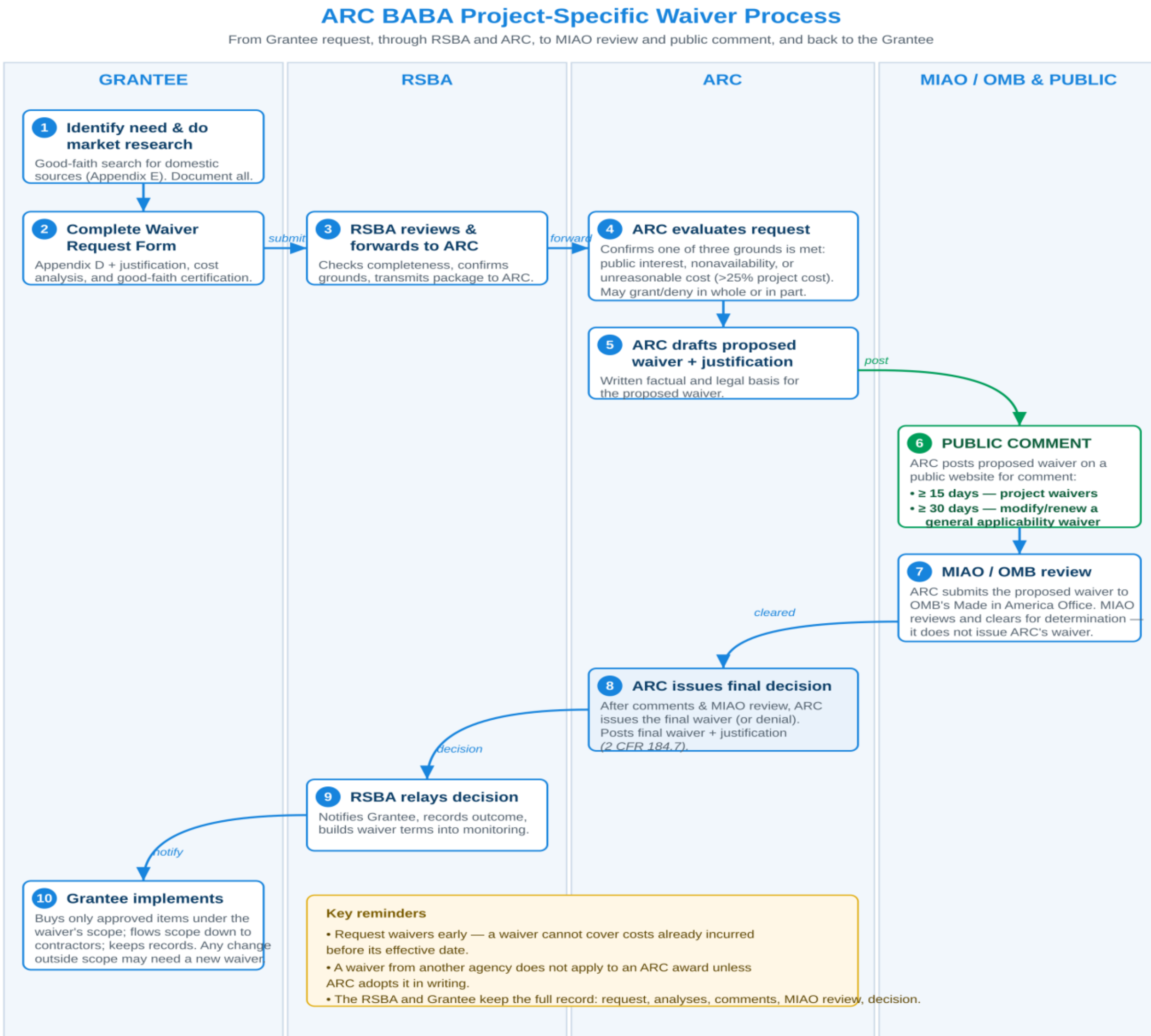

Figure 3. The project-specific waiver process — from the Grantee's request, through the RSBA and ARC, to the public-comment posting and MIAO review, and back to the Grantee.

5.5 After a waiver is issued: implementation and monitoring

A waiver is the beginning of an ongoing duty, not the end of compliance. It authorizes only the specific foreign-produced item named in the waiver, and only to the extent described. The Grantee must build the waiver into procurement and contract administration, tell contractors and subcontractors its scope and conditions, and buy only the approved items under it. RSBAs must request from Grantees documentation showing that what was bought matches the waiver — purchase orders, invoices, manufacturer information, and installation records. Any material substitution, quantity increase, or change outside the waiver's scope may require a new waiver. The RSBA must retain those records in the project file.

ARC posts the final waiver and justification under 2 CFR 184.7. The RSBA and Grantee must keep the administrative record. During construction, the RSBA monitors compliance through reimbursement reviews, project monitoring, desk reviews, site visits, and procurement-record checks, confirming the waiver is used only for approved products.

RSBAs and Grantees must keep all waiver records for the period required under the Uniform Guidance — generally three years from the final expenditure report, longer if litigation, audit, or other circumstances apply. Records include the request, market research, correspondence, the published determination, procurement documents, invoices, delivery records, and evidence of where the waived products were used. They must be available to ARC, inspectors general, the GAO, and auditors.

RSBAs and Grantees must reflect approved waivers in the project documentation, reimbursement requests, progress and performance reports, and closeout submissions. At closeout, the Grantee and RSBA must certify BABA compliance and identify any waivers relied on.

Please note ARC may have adopted program-wide or agency-wide general applicability waivers that may apply to a grant, product, or project (i.e., an ARC small grants or *De Minimis* BABA waiver). RSBAs and Grantees should consult the ARC BABA website to view a list of ARC's approved general applicability waivers, waivers based on an international treaty, and project-specific waivers referencing any potential waiver that could apply to a specific award or project. RSBAs must work with Grantees to determine the applicability of ARC general applicability waivers, monitor compliance with the terms and conditions of these waivers, and properly document and report their use to ARC. Grantees may not apply a waiver of an agency other than ARC without specific permission based on its applicability, and RSBAs should consult ARC prior to an applicability determination.

⇄ RSBA ↔ Grantee: Implementing and monitoring a waiver

- The RSBA verifies that the Grantee has built the waiver's scope into procurement, informed contractors of its terms, and bought only approved items under it.
- The RSBA monitors during construction (reimbursement reviews, desk reviews, site visits, procurement-record checks) to confirm the waiver is used only for approved products.
- · The RSBA works with the Grantee to determine whether an ARC general applicability waiver applies, monitors their conditions, and reports their use to ARC.

5.6 Projects funded by ARC and other agencies

The Buy America Preference applies at the project level to the entire infrastructure project — even when the project also receives non-ARC funds, and even when infrastructure is only part of a broader award.

If a project gets ARC funds plus funds from another source, it must still follow ARC's guidance and manuals, including on waivers. RSBAs and Grantees may not rely on an agency's guidance other than ARC's or waivers other than ARC's to satisfy the Buy America Preference for the ARC-funded project — not even for part of it. When receiving non-ARC funds, RSBAs must verify that Grantees have checked with that other agency about its own BABA duties. Meeting another agency's standards does not excuse Grantees from ARC's.

Multi-agency coordination. When several agencies fund a project and ARC provides the largest federal share, ARC generally leads the coordination of any proposed waiver, working with the RSBA. Even so, each agency remains responsible for its own Buy America obligations, and one agency's waiver does not automatically apply to another's funding. RSBAs must ensure that Grantees still meet all ARC requirements, including submitting the ARC BABA Waiver Request Form, and work with every funding agency on that other agency's applicable requirements.

5.7 Working with OMB's Made in America Office

Role of OMB. OMB is the main policy and coordinating body for BABA across the federal government. Under Section 70915 of BABA, OMB issues guidance to agencies. OMB issued Memoranda M-22-11 and M-24-02 and promulgated 2 CFR Part 184, which together set consistent definitions, categorization standards, and waiver procedures across agencies and programs.

Role of the Made in America Office (MIAO). Created by Executive Order 14005 in 2021, the MIAO is the central authority for enforcing Made in America laws. Its most important BABA role is waiver review. Before ARC grants a waiver, it must give the MIAO a description and a detailed justification. The MIAO reviews the proposed waiver and clears it for public notice; after the comment period, ARC submits a final version for the MIAO's determination. The MIAO also oversees publication of proposed and final waivers on the central transparency website.

6. Risks of Not Complying

Not complying with BABA can have meaningful legal and financial consequences for the grantees. Depending on how serious the problem is, ARC may require repayment of federal funds tied to the noncompliant spending, disallow costs, or withhold future funding. Grantees and subrecipients may also face administrative remedies under the award — corrective action plans, enhanced monitoring, suspended payments, or termination.

In cases of willful misconduct, fraud, or false certifications, Grantees may face liability under the False Claims Act or other federal statutes. Serious or repeated violations may factor into suspension or debarment, which can affect your ability to receive future federal assistance from ARC and federal agencies. The best protection is strong internal controls, careful supply-chain documentation, and prompt attention to any problems encountered along the way.

7. BABA and Other Domestic-Content Laws

BABA is not the only domestic-content law, and although some requirements and terminology they use may be similar to those of BABA, the others are most often not the same as BABA and generally do not apply to ARC financial assistance. Compliance with one does not prove compliance with another, so a project subject to more than one law must be analyzed separately under each. The table below summarizes the differences; **Comparison of Domestic-Content Laws** has a fuller comparison.

Feature	BABA	Buy American Act (1933)	FTA Buy America	IRA Domestic Content
Applies to	Infrastructure grants (financial assistance)	Direct federal procurement contracts	Federally funded transit projects	Clean-energy tax credits
Product categories	Iron/steel, manufactured products, construction materials	End products	Steel/iron, manufactured products	Steel/iron, manufactured products
Cost-percentage test	Yes (manufactured products, 55%)	Yes (60%)	No (except rolling stock)	Yes (manufactured)
Waivers	Public interest, nonavailability, cost	Yes (incl. Trade Agreements Act)	Yes	N/A (bonus credit)

Key point: The Buy American Act covers direct federal purchasing (not grants or cooperative agreements) and allows Trade Agreements Act waivers in that context — a path that does not exist under BABA. FTA Buy America continues to govern transit projects under its own authority and waiver requirements, with 2 CFR Part 184 mainly adding construction-materials coverage, among other changes. The IRA direct-pay tax provisions and domestic-content bonus are voluntary tax incentives with no waiver mechanisms. Because the categories, thresholds, and waiver structures all differ, a project subject to more than one — such as a federally assisted clean-energy build — needs an independent analysis under each.

Where to Get Help

For any BABA-related question about projects or awards, Grantees have been directed to contact the RSBA administering the ARC grant. RSBAs may turn to ARC for assistance to resolve BABA-related questions or problems. The appendices that follow provide selected forms, templates, and step-by-step tools that may prove helpful to RSBAs.

⇄ RSBA ↔ Grantee: Where questions go

- Grantees direct all BABA questions to the RSBA administering the grant — not to ARC directly.
- The RSBA resolves what it can and escalates to ARC when needed.

Appendices

Frequently Asked Questions

https://www.arc.gov/resource/baba-faq/

Planning Checklist

https://www.arc.gov/wp-content/uploads/2026/07/RSBA-BABA-Planning-Checklist.pdf

BABA Compliance Project Certifications

https://www.arc.gov/wp-content/uploads/2026/07/RSBA-BABA-Project-Compliance-Certifications.pdf

ARC BABA Waiver Request Form

https://www.arc.gov/resource/baba-waivers/

Market Research Guide

https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Market-Research-Guide.pdf

Sample Contract Clause and Bid Language

https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Sample-Contract-Clause-and-Bid-Language.pdf

Subrecipient's Certification of Compliance

https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Subrecipients-Certification-of-Compliance.pdf

Contractor's Certification of Compliance

https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Contractors-Certification-of-Compliance.pdf

Subcontractor's Certification of Compliance

https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Subcontractors-Certification-Compliance.pdf

Supplier's / Manufacturer's / Steel Mill's Certification of Compliance

https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Suppliers-Manufacturers-Certification-of-Compliance.pdf

Cost of Components — Sample Calculation

https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Cost-of-Components-Sample-Calculation.pdf

Comparison of Domestic-Content Laws

https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Comparison-of-Domestic-Content-Laws.pdf

BABA Bill of Materials (Sample)

https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Bill-of-Materials-Sample.pdf

Request for Infrastructure Project Determination

https://www.arc.gov/wp-content/uploads/2026/08/Request-for-Infrastructure-Project-Determination.pdf