



June 6, 2022

Celeste Drake  
Director of Made in America  
Office of Management and Budget  
725 17th St NW  
Washington, DC 20503

**RE: Docket No. OMB-2022-0005, Listening Sessions and Request for Information**

Dear Ms. Drake:

Thank you for soliciting information in your request for information at 87 Federal Register 23888 on implementation of the Infrastructure Investment and Jobs Act's requirements for the application of domestic preference requirements, known as "Buy America" requirements, to infrastructure projects funded by federal financial assistance. Associated Builders and Contractors submits the following information to assist the Office of Management and Budget in implementing these requirements.

**About Associated Builders and Contractors**

ABC is a national construction industry trade association representing more than 21,000 member companies. ABC and its 69 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for government and private sector customers.<sup>1</sup>

The vast majority of ABC's contractor members are small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)<sup>2</sup> and industry workforce employment (more than 82% of the construction industry is employed by small businesses).<sup>3</sup> In fact, construction companies that employ fewer than 100 construction professionals compose 99% of construction firms in the United

---

<sup>1</sup> For example, see ABC's 32nd Excellence in Construction Awards program from 2022:

<https://www.abc.org/Portals/1/2022%20Files/32ND%20EIC%20program--Final.pdf?ver=2022-03-25-115404-167>.

<sup>2</sup> U.S. Census Bureau 2019 County Business Patterns:

<https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePreview=true> and <https://www.census.gov/programs-surveys/cbp/data/tables.2019.html>.

<sup>3</sup> 2020 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2020), at pg. 3,

<https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic-Profile-US.pdf>.

States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.<sup>4</sup>

In addition to small business member contractors that build private and public works projects, ABC also has large member general contractors and subcontractors that perform construction services for private sector customers and federal, state and local governments. For example, ABC members won 57% of the \$128.73 billion in direct prime construction contracts exceeding \$25 million awarded by federal agencies during fiscal years 2009-2021. These federal contractors provide subcontracting opportunities to large and small contractors in the specialty trades and deliver taxpayer-funded construction projects on time and on budget for their federal government customers.

ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

## **Response to the Request for Information**

### **I. The Construction Industry Already Faces Significant Supply Chain Challenges**

The U.S. construction industry currently faces significant headwinds in the form of supply chain disruptions, unprecedented materials cost inflation and declining investment. Our concern is that immediate implementation of Buy America requirements could exacerbate these disruptions and further increase costs for contractors and taxpayers.

Despite access to vaccines and decreasing case numbers, the ongoing COVID-19 pandemic continues to cause significant supply chain disruptions. Countries around the world continue to impose COVID-19 shutdowns, impacting the global supply chain. In addition to manufacturing issues, a number of transportation issues, including delays at West Coast ports, rail bottlenecks and a lack of trucks to transport materials have contributed to the disruptions.<sup>5</sup>

These supply chain disruptions, among other factors, have contributed to massive increases in material prices. In April 2022, construction input prices were up 23.7% from April 2021 prices, and up 41.0% since the onset of the COVID-19 pandemic in February 2020. The increase was felt across nearly all materials, with input prices up in 10 of 11 subcategories. Currently, economists predict that this inflation is not expected to decline significantly in the near term given impacts of the Russia-Ukraine War, COVID-19, increased transportation costs and increasing demand for construction materials.<sup>6</sup>

---

<sup>4</sup> U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, Available at <https://thetruthaboutplas.com/wp-content/uploads/2021/07/Construction-firm-size-by-employment-2019-County-Business-Patterns-Updated-071321.xlsx>.

<sup>5</sup> Sam Barnes, "Missing Links," Construction Executive, April 2022.

<sup>6</sup> "Monthly Construction Input Prices Increase in April, Says ABC," ABC, May 2022.

Finally, the challenges that the industry is facing have led to a decline in overall investment in the construction industry. In the first quarter of 2022, investment in nonresidential structures declined at a rate of 0.9%, following contractions in nine of the past 10 quarters.<sup>7</sup>

## **II. Buy America Implementation Should Be Delayed**

The OMB should consider the supply chain challenges currently facing the construction industry, as outlined above, in its implementation of these requirements. Given the unprecedented nature of the issues facing the industry, the OMB should delay implementation of domestic preference requirements for construction materials on federally assisted projects. Instead, the OMB should conduct extensive studies and seek additional public comment to ensure effective implementation of Buy America requirements.

### **1. Multiple federal agencies have already provided six-month Buy America waivers.**

The actions of multiple federal agencies tasked with federal assistance of infrastructure clearly demonstrates the need for deliberate implementation of these updated requirements. On April 28, 2022, the U.S. Department of Transportation announced a six-month waiver of Buy America requirements,<sup>8</sup> and the U.S. Department of Housing and Urban Development followed suit with a similar waiver on May 3, 2022.<sup>9</sup> Both agencies cited the lack of available information to immediately implement these requirements, with the DOT stating:

Because construction materials have not previously been subject to Made in America rules as have iron and steel, there is a need to gather data on domestic sourcing capacity to inform stronger standards. For example, while the exact impact on highway project construction is unknown, the Department believes that it could be significant. ... The Department recognizes both the importance of ensuring Buy America compliant construction materials and the need to implement the requirement in a way that is not overly burdensome.<sup>10</sup>

A similar lack of data is likely to impact the implementation of Buy America requirements on federal assistance programs across additional federal agencies with responsibility for infrastructure funding. The OMB should issue a similar six-month or longer waiver for all federal agencies to ensure Buy America standards can be fully studied and developed prior to implementation.

---

<sup>7</sup> "GDP: U.S. Economy Contracts, Investment in Structures Down Again, Says ABC," ABC, April 2022.

<sup>8</sup> See "Notice of Proposed Temporary Waiver of Buy America Requirements for Construction Materials" published on regulations.gov on April 28, 2022: <https://www.regulations.gov/document/DOT-OST-2022-0047-0001>.

<sup>9</sup> See 87 Federal Register 26219: <https://www.federalregister.gov/documents/2022/05/03/2022-09513/general-applicability-waiver-of-build-america-buy-america-provisions-as-applied-to-recipients-of-hud>.

<sup>10</sup> See 87 Federal Register 31931: <https://www.federalregister.gov/d/2022-11195/p-23>.

## **2. The OMB should consider agency staffing needs for an expected high volume of waiver requests.**

As noted in the OMB's initial guidance on implementing the new Buy America requirements, the IIJA allows for several categories of waivers that recipients can apply for when the requirements may be unfeasible.<sup>11</sup>

Given the supply chain challenges outlined above, it is highly likely that federal agencies will face an extremely high volume of waiver applications, especially considering the OMB's guidance that "to the greatest extent practicable, waivers should be targeted to specific products and projects."<sup>12</sup> Many products and projects may qualify for the nonavailability or unreasonable cost waivers given the difficulty contractors already face in obtaining affordable construction materials.

The OMB should consider the impact of a flood of waiver applications on federal agencies, which are already working to hire enough employees to effectively distribute IIJA funding and procure additional direct federal construction contracts above baseline spending.<sup>13</sup> Agencies may not have sufficient staff to process these applications in a timely manner, which would lead to additional delays and increased costs. The OMB should consider how waivers may be granted more broadly to alleviate this concern.

## **3. Separate rulemakings for each construction material would lead to more effective implementation.**

Finally, ABC urges the OMB to undergo individual study and rulemaking processes for each of the five construction material categories.

There are a wide range of differences across the different materials, including domestic capacity and manufacturing processes. Applying a uniform standard across all categories may be considered arbitrary and capricious, as it fails to take into account these important differences.

Instead, by moving forward with a formal rulemaking process for each material, the OMB and other federal agencies will be able to thoroughly research standards needed for each material, as well as receive a higher number of public comments than is feasible during this RFI. This would ultimately lead to more informed and effective Buy America requirements.

## **Conclusion**

While ABC supports strategies to expand domestic jobs and manufacturing to avoid global supply chain disruptions and capture economic benefits within America, Buy America policies need to be balanced with safeguards against increased costs and/or

---

<sup>11</sup> See OMB Memo M-22-11, pg. 6: <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.

<sup>12</sup> Ibid

<sup>13</sup> See "DOE: We're hiring 1,000 workers in infrastructure push," E&E News, May 24, 2022: <https://www.eenews.net/articles/doe-were-hiring-1000-workers-in-infrastructure-push/>.

delays of infrastructure projects funded by the federal government and ultimately taxpayers. The OMB should carefully consider our recommendations to ensure these requirements can be implemented with minimal disruptions to these critical infrastructure projects.

Thank you for the opportunity to submit comments on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben Brubeck". The signature is fluid and cursive, with the first name "Ben" and last name "Brubeck" clearly distinguishable.

Ben Brubeck  
Vice President of Regulatory, Labor and State Affairs  
Associated Builders and Contractors  
brubeck@abc.org