

The 2021 Infrastructure Investment and Jobs Act (IIJA) delivered good news to the construction industry, with an estimated \$1 trillion dollars to fund U.S. infrastructure and related projects.

However, with this good news comes a recommendation to

The IIJA (a.k.a. the Bipartisan Infrastructure Law) not only 'Buy America' provision that is important to every construction

First, more about the IIJA. In this case, "infrastructure" includes surface transportation programs, federal lands access and freight and highway projects. It also includes (but is not limited to) roads and bridges, passenger and freight rail, public transit, ports and waterways, airports, water infrastructure, and power

For manufactured products, the law requires (a) the product to be manufactured in the U.S.; and (b) the cost of the components of the manufactured product that are mined, produced, or manufactured in the U.S. is greater than 55% of the total cost of all components of the manufactured product. The 55% requirement stands unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

All construction, alteration, maintenance, or repair of the Buy America requirements, unless an exemption applies. A waiver is granted to the federal agency that provides funding for the project.

Funding increments or amendments within a current budget year, supplements for new scope of work and renewal of funding awards from federal agencies will likely trigger the application of the Buy America provisions to a project that receives federal funding. The Administration continues to develop guidance on how to implement this provision.

WAIVERS TO 'BUY AMERICA' REQUIREMENTS

Many construction projects depend on components that are only manufactured outside of the United States. Eligible recipients of federal funding may request Buy America waivers for the components or products that are necessary for completion of their projects. Federal agencies are urging eligible funding recipients to focus their waiver requests on time-limited, targeted waivers to the greatest extent practicable.

Some waivers that are traditionally available under existing Buy America laws are authorized under the latest provision where (1) applying the Buy America requirement would be inconsistent with the public interest; (2) where the iron, steel, manufactured products, or construction material is not in sufficient quantities or of a satisfactory quality; and (3) where inclusion of the domestic products or construction materials will increase the cost of the overall project by more than 25%.

Federal agencies are responsible for processing and approving all waivers to this requirement, including waivers requested by recipients and on behalf of subrecipients. Several federal

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About the Article

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