



National Electrical Manufacturers Association

The association of electrical equipment
and medical imaging manufacturers
www.nema.org

March 13, 2023

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

The Honorable Livia Shmavonian
Director
Made in America Office
725 17th Street NW
Washington, D.C. 20503

Re: Notice OMB 2023-0004, Guidance for Grants and Agreements

Dear Director Young and Director Shmavonian:

As the leading trade association representing the manufacturers of electrical and medical imaging equipment, the National Electrical Manufacturers Association (NEMA) provides the attached comments in response to the February 9, 2023 notice inviting public input on proposed guidance for grants and agreements supporting the implementation of the Build America, Buy America (BABA) provisions of the Infrastructure Investment and Jobs Act (IIJA).

NEMA represents a \$180B industry in the US, nearly 500,000 skilled jobs and 1% of US GDP. Our members are electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems. An estimated \$425 billion of the \$1.5 trillion BIL funds are dedicated towards energy and electrification projects. The electroindustry has a robust domestic manufacturing base and supports the fundamental goal of creating good-paying American jobs and shoring up our domestic supply chains.

NEMA supports the swift implementation of the IIJA and shares the Administration's goals to build climate resiliency, create high quality jobs, and promote equity and inclusion, while strengthening our domestic supply chains. NEMA also recognizes the continued limitation of U.S. based materials, exacerbated by ongoing supply chain and workforce disruptions, impedes the industry's ability to deliver on IIJA objectives. NEMA's comments on the proposed guidance are attached.

If you have any questions on these comments, please contact Madeleine Bugel of NEMA at Madeleine.Bugel@nema.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Spencer Pederson', is written over a light blue horizontal line.

Spencer Pederson
Senior Vice President, Public Affairs

NEMA applauds the Office of Management and Budget for issuing further guidance on the Build America, Buy America Act provisions of the Infrastructure Investment and Jobs Act. The current lack of clarity has hindered long term business planning for manufacturers and may ultimately delay the vital infrastructure projects. Achievable, consistent, and understood implementation rules can help to rebuild domestic manufacturing, improve U.S. infrastructure, and strengthen partnerships with allies, while reducing our reliance on unfriendly foreign suppliers.

Proposed change to cost of components

NEMA commends the proposed changes to the “cost of components” to become consistent with the Federal Acquisition Regulation (FAR) 45 CFR 25.003. The widely understood and longstanding rules of the FAR are an appropriate precedent to incorporate in the BABA guidance.

However, it is unclear if the last level of labor or “final assembly” of a manufactured product is included in the cost of components definition in the proposed guidance. NEMA urges OMB to clarify that domestic labor contributing to the final assembly of a manufactured product is included when calculating the cost of components of a product.

In NEMA’s recent supply chain survey, the results of which have been provided to the Made in America Office, respondents reported that including labor costs into the 55% requirement and consistent classification of products by federal departments would be a solution to aid companies in becoming BABA-compliant. Additionally, inclusion of design and engineering domestic labor costs would support U.S. jobs.

Including labor costs would promote American jobs, consistent with both Congress’s intent and existing regulatory regimes governing manufacturer supply chains. Many NEMA members’ products may require low value components to be sourced from foreign suppliers, but much of the development, design, and assembly is done domestically. A method of determining domestic content that factors in the cost of U.S. labor would benefit domestic firms, and positively contribute to domestic manufacturing and jobs.

Supply chain resilience and trading partners

The United States has committed to free trade agreements (FTAs) and the World Trade Organization Government Procurement Agreement (WTO GPA), which support domestic economic policy and growth. The proposed guidance did not include any further clarification on the interplay between the BABA domestic content requirements and these long established and proven agreements. Failure to honor commitments made under FTAs and the WTO GPA will likely lead to trading partners initiating dispute settlement proceedings against the United States.

The long-established rules of federal procurement policy and national trade policy under the Trade Agreements Act of 1979 (TAA) benefit U.S. manufacturers as they provide substantial opportunities to sell into foreign markets. Free trade agreements and WTO agreements support supply chain resiliency through a common set of understood rules that can inform long term business and supply chain planning. Allowing firms to use suppliers in signatory countries may incentivize firms to move away from sourcing materials and components from unfriendly foreign suppliers.

Should further BABA guidance not include reference to the United States free trade agreements and WTO commitments, OMB should designate countries from which materials and components can be procured and waive the component test for products substantially transformed in one of these countries or the U.S., similar to the established TAA rules for federal procurement. From the results of NEMA's supply chain survey the following countries should be included in this group: USMCA countries, European Union member states, the United Kingdom, and Indo-Pacific Economic Framework partners.

Definitions

Current BABA guidance lacks criteria on how to determine if products are components, subcomponents, or manufactured products. OMB should provide criteria on how to determine what products are considered the final manufactured products when used in infrastructure projects.

OMB requested comments on the definition of predominately iron or steel. The Environmental Protection Agency (EPA), for Buy American federal procurement purposes, first specifies what types of products may be considered an iron or steel product and then determines if the product is an iron or steel product if the product is made of greater than 50% iron or steel, measured by cost. Should OMB move forward with a definition, the precedent set in the EPA memorandum on the American iron and steel provisions of P.L. 113-76 The Consolidated Appropriations Act issued on March 20, 2014 should be used to inform the BABA guidance.

Clear and consistent guidance

The Administration should establish consistent criteria and definitions for domestic products across all agencies, programs, and funding methods. Varying rules across agencies and programs will result in high administrative burdens on firms. As much of the funding from the IIJA will be administered by state governments clear rules and guidance must be provided to the states to ensure a timely delivery on the infrastructure projects.

Further, the administration should provide guidance on these criteria and definitions to implementing state agencies. As a means of future proofing infrastructure investments, the federal government should distribute guidance to the states encouraging them to use IIJA funds to update their infrastructure to invest in the newest technologies that deliver greater benefits as opposed to legacy equipment.