

# Buy American Act

## Background and Introduction

The Buy American Act (41 USC § 10a-10d) of 1933 (hereinafter, the BAA) requires the US government to prefer US-made products when making purchases. Moreover, federal grants—such as those made under the American Recovery and Reinvestment Act (ARRA)—may expand aspects of BAA and extend BAA requirements to recipients and subrecipients. The requirement may be waived under certain circumstances.

BAA:

- Applies only to construction, alteration, maintenance, or repair of a building or public work.
- Requires that all (as opposed to substantially all) iron, steel, and manufactured goods used in a project must be produced in the US.
- Applies regardless of the size of the project.
- Allows for five exceptions with the approval of the granting federal agency.
  1. Compliance would be inconsistent with public policy.
  2. Compliance would unreasonably increase the cost.
  3. Compliance is impracticable because a required product or a component of a required product is not available in reasonable quantities or of sufficient quality from US manufacturers.  
(The following two exceptions do not apply to ARRA and are unlikely, given their nature, to be applied to states or municipalities.)
  4. Materials in question are to be used outside of the US.
  5. The acquisition is less than the micro-purchase (de minimis) threshold.

The scope of this internal control questionnaire is limited to BAA and does not extend to other grant or procurement related requirements.

Certain terms that may be unfamiliar are explained in the Glossary following this internal control questionnaire.

## QUALIFYING / IDENTIFYING QUESTIONNAIRE

**Objectives:** To determine whether the provisions of BAA apply to the auditee.

**Identifying:**

Agency Name			
Agency's Capacity (Check all that apply.)		<input type="checkbox"/> Prime Recipient <input type="checkbox"/> Subrecipient <input type="checkbox"/> Pass-through Entity <input type="checkbox"/> Other (Explain) _____	
	<b>Qualifying:</b>	<b>Yes</b>	<b>No</b>
1.	Does the award specify that the award is subject to BAA requirements?		
2.	Are any of the proceeds of the grant under consideration used for the construction, alteration, maintenance, or repair of a building or public work?		
If the answer to question 1, question 2, or both is " <u>no</u> ," this grant is <u>not</u> subject to the provisions of the Buy American Act and the balance of this questionnaire should not be executed.			

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## CONTROL FRAMEWORK INTERNAL CONTROL QUESTIONNAIRE

**Control Objectives:** To provide reasonable assurance that:

1. There is compliance with the provisions of BAA, if such provisions are applicable under the circumstances.
2. Proper certifications of compliance with the provisions of BAA are required as part of the procurement process and that those certifications are retained for audit.
3. The requirements of BAA are appropriately communicated to staff, subrecipients, and vendors.
4. There is, as may be appropriate, effective monitoring by recipients of federal grants of BAA compliance by the recipient, subrecipients and vendors.
5. Steps are taken to discover any subrecipient and vendor non-compliance.
6. Steps are taken to terminate relationships with non-compliant subrecipients and vendors.

<b>A.</b>	<b>Control Environment:</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
1.	Is management aware of the requirements of BAA?				
2.	Is management aware of its responsibility to monitor compliance with BAA?				
3.	Is there written evidence that management has communicated the requirements of BAA to staff?				
4.	Is there written evidence that management has communicated the requirements of BAA to subrecipients?				
5.	Is there written evidence that management has communicated the requirements of BAA to vendors?				
6.	Has management established training for staff to help them identify the high risk contract components? (This would include metallic materials or manufactured goods.)				

<b>B.</b>	<b>Risk Assessment:</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
1.	Are there mechanisms in place to identify vendors, subcontractors, or subrecipients most likely to violate BAA requirements? (This would include suppliers of metallic materials or manufactured goods.)				
2.	Has management identified how compliance with BAA will be monitored?				
3.	Has management assessed the risk that a monitoring program is ineffective?				
4.	Has management assessed the risk that the staff may be inadequately trained (because of insufficient training program, infrequency of updating, or staff turnover) to identify non-compliance with BAA?				

<b>C.</b>	<b>Control Activities:</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
1.	Are vendors informed by procurement documents of the requirement to comply with BAA?				
2.	If an exception is claimed, is there supporting documentation maintained for the exception from the federal grantor?				
3.1	Are vendors, if applicable, required to submit self-certifications of compliance with BAA?				

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<b>C.</b>	<b>Control Activities:</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
3.2	Are controls in place to make sure self-certifications are provided and are in proper form?				
4.1	Are vendors, if applicable, required to provide waivers provided by the federal grantor?				
4.2	Are controls in place to make sure waivers from the federal grantor either are in proper form or are in compliance with BAA general waivers?				
5.	Does management or audit personnel investigate (beyond self-certification) where there is suspicion that iron, steel or a foreign-made end-product, not subject to waiver, has been furnished?				
6.	Does management or audit personnel request and review documentation (beyond self-certification) supporting the domestic production of iron and steel and the domestic assembly of end-products?				
7.	Does a contracting officer or auditor investigate (beyond self-certification) where there is suspicion that foreign-made iron, steel or end-product, not subject to exception or waiver, will be furnished?				
8.	Are periodic site inspections (announced and unannounced) of work sites involving buildings or public works conducted to ascertain compliance with the provisions of BAA?				
9.	Are the source documents relating to the provision of iron, steel and manufactured goods by domestic producers that may import materials or components reviewed to ensure compliance with the provisions of BAA?				

<b>D.</b>	<b>Information and Communication:</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
1.	Are communication channels established for staff, subgrantees, vendors, and the public to report failure to comply with BAA?				
2.	Does the agency periodically interview vendor and subgrantee employees to ascertain composition and source of materials or components covered by BAA?				

<b>E.</b>	<b>Monitoring:</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
1.	Is an agency employee or an outside consultant, familiar with BAA, assigned the responsibility to monitor subrecipient, contractor, subcontractor and vendor compliance with BAA?				
2.	Does management periodically review procedures to ensure that subrecipients, contractors, subcontractors and vendors are properly notified of the BAA requirements?				
3.	Does management periodically review documentation to ensure that contractor and subcontractor waivers are properly received?				

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## Special Rules:

The BAA allows for five standard exceptions from its requirements:

Applicable to all projects:

1. Compliance would be inconsistent with public policy.
2. Compliance would unreasonably increase the cost.
3. Compliance is impracticable because a required product or a component of a required product is not available in reasonable quantities or of sufficient quality from US manufacturers.

Applicable to federal projects only:

4. Materials in question are to be used outside of the US.
5. The acquisition is less than the micro-purchase (de minimis) threshold.

The first three of these exceptions apply to all acquisitions; the last two apply only to federal acquisitions (state and local governments are not involved in the construction of public works outside the border of the US and state and local governments have their own procurement methods and policies).

Though these are standard exceptions, a vendor or supplier must still request and be granted the exception by the federal agency funding the project for the exception to be claimed. The grant of exception will be in writing, can be produced by the vendor or supplier, and a copy of the exception should be available for inspection by auditors.

## Micro-purchase (de minimis) threshold:

This is the monetary amount under which federal agencies can acquire goods and services using less stringent acquisition methods. As of August 30, 2010, the threshold was re-established (by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council) at \$3,000. The threshold is adjusted for inflation every five years (Section 807, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005). Given differing procurement rules and procedures, the de minimis threshold is not currently applied, nor likely to be applied, to non-federal governmental organizations.

## Public work:

A public work is a construction or engineering project carried out by the government on behalf of the public. Public works include both infrastructure assets (such as airports, canals, dams, dikes, pipelines, railroads, roads, tunnels, and artificial harbors) and non-infrastructure assets (such as mines, schools, hospitals, water purification and sewage treatment centers).

## Waiver:

A waiver is similar to an exception (q.v.), but does not fit into one of the five standard categories for exception. As with an exception, the waiver must be granted by the federal agency funding the project, the waiver must be in writing and the waiver should be available for inspection.