



March 13, 2023

The Honorable Shalanda Young
Director, Office of Management and Budget
Via: Regulations.gov

Re: [Request for Comments on OMB's proposed Guidance for Grants and Agreements](#)

Dear Director Young,

The Association of State Drinking Water Administrators' (ASDWA's) members are co-regulators with the Environmental Protection Agency (EPA) for the implementation of the Safe Drinking Water Act (SDWA), including the Drinking Water State Revolving Loan Fund (DWSRF). ASDWA and its members would like to thank the Office of Management and Budget (OMB) for the opportunity to comment on the Agency's Guidance for Grants and Agreements to support the implementation of the Build America, Buy America (BABA) Act provisions of the Infrastructure Investment and Jobs Act. ASDWA's members are in the midst of working with systems to develop grant applications to ensure successful implementation of the Bipartisan Infrastructure Law (BIL) funding, and any actions by OMB to clarify and streamline BABA will help to ensure that obtaining this funding is as smooth and straightforward as possible and will reach the communities that need it most. Additionally, ASDWA has previously commented on the workload that EPA staff will face as the Agency works to provide product-specific waivers under BABA. ASDWA appreciates this guidance and hopes it will help EPA staff process these waivers in a timely fashion. ASDWA encourages OMB to continue to engage with EPA as the Agency begins to process these product-specific waivers to determine if more guidance is needed.

Regarding the specific language within the guidance, ASDWA has the following comments:

- Regarding determining whether the cost of components for manufactured products is greater than 55% of the total cost of all components, OMB should replace the word "contractor" with "manufacturer." "Contractor" gives the impression that the construction project itself is the product, and any costs of the construction contract are components. This could lead to significant confusion when determining if 55% of the components are produced in the US. Clear and consistent definitions are needed to ensure contractors and purchasers understand which products comply with BABA.
- ASDWA agrees with OMB's inclusion of "allocable overhead," but OMB should better define what is included within this definition. For example, it would be helpful to include other costs, such as shipping.
- ASDWA is concerned that using the definitions for "end product" from 48 CFR 25.003 will create confusion. OMB should provide BABA with a unique definition that only refers to the manufactured product itself.

- If OMB considers engineered wood products a construction material, it should include engineered wood products in its list or clarify that they are considered lumber.
- OMB should adopt a definition for “predominantly iron or steel” items. This definition is necessary to distinguish when an iron or steel product is instead a manufactured product. OMB should also clarify whether the non-iron and/or steel components of an iron or steel product must be produced in the United States.
- OMB should clarify the definition of “composite building material.” ASDWA assumes OMB intends the definition to include a construction material that is listed that is also combined with a plastic or polymer-based product. With the definition as is, “composite” could mean a combination with any other type of product.
- ASDWA recommends that OMB exclude cement, aggregates, or aggregate binding agents from BABA requirements entirely and not consider these manufactured goods. However, ASDWA supports including these materials under BABA when those materials are combined with construction materials, iron, steel, or manufactured goods.
- Section 184.3 should include additional information to explain when combinations of the listed construction materials become manufactured products. For example, is a glass window with a vinyl or aluminum frame still considered a construction material? Is a glass window with a steel frame then considered a manufactured product?
- OMB should clarify what is considered “predominantly” iron and steel. This is necessary to determine if an item is otherwise considered a manufactured product.
- The proposed guidance references iron and steel “products,” yet the law only indicates iron and steel. OMB should determine if Congress intended to only include non-complex items such as iron and steel items (rebar, supports, sheet metal, etc.) or if more complex items with iron and steel components combined with other materials should be considered manufactured products.
- Section 184.4, subsection (c), should clarify if vehicles are considered infrastructure and must comply with BABA as a manufactured product.
- Section 184.5, part (a) includes the acquisition cost of materials. Part (b) should also be clear that the cost of acquiring materials is part of the cost of components.

ASDWA appreciates the opportunity to comment on this guidance and looks forward to further engagement with OMB on these issues. Please contact me (aroberson@asdwa.org) or Stephanie Schlea (sschlea@asdwa.org) if you have any questions regarding these comments.

Sincerely Yours,



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