

Written Statement of

Ty Edmondson
CEO & President
T.A. Loving Company

On behalf of

The Associated General Contractors of America

to the

United States House of Representatives

Subcommittee on Highway and Transit

For a hearing on

“Implementation of Buy America Provisions: Stakeholder Perspectives”

February 15, 2024



The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

2300 Wilson Boulevard, Suite 300 • Arlington, VA 22201 • Phone: (703) 548-3118

I. Introduction

Chairman Crawford, Ranking Member Norton, and members of the Subcommittee on Highway and Transit, thank you for inviting me to testify on this vitally important topic. My name is Ty Edmondson, and I am the CEO & President of T.A. Loving Company and a board member of the Associated General Contractors of America (AGC) where I serve as Chair of the Utility Infrastructure Division.

AGC is the leading association in the construction industry, representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms, many of which are small businesses. Many of the nation's service providers and suppliers are also associated with AGC through a nationwide network of chapters. AGC contractors are both union and open shop and are engaged in the construction of the nation's highways, bridges, transit systems, airports, waterworks facilities, waste treatment facilities, commercial buildings, shopping centers, factories, warehouses, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more. In 2020, 91% of firms within the construction industry had 20 or fewer employees.¹

T.A. Loving Company was founded in Goldsboro, North Carolina in 1925. For nearly 100 years, our firm has played an essential part in the growth of our home state and the country by building thousands of construction projects across the southeast and as far away as California. T.A. Loving Company is responsible for historic undertakings including the construction of Fort Bragg, now Fort Liberty, a watershed project for our company at the outset of World War II, and the construction of the Pettus Bridge in Selma, Alabama – a national historic landmark.

Our work has taken T.A. Loving Company's workforce to numerous states, and over the course of 99 years – our company has provided gainful employment and career opportunities to more than 35,000 Americans. Those people and projects have provided the Southeast with access to clean water resources, improved transportation, educational opportunities, life-saving healthcare, and other essential facilities and civil infrastructure.

Today, T.A. Loving Company employs more than 400 construction professionals and continues to build across North Carolina, Virginia, and South Carolina.

In my testimony today, I will discuss the implementation of the Build America, Buy America Act (BABAA) as it relates to the construction industry, including the challenges that it poses in efforts to rebuild our nation's transportation infrastructure.

The Infrastructure Investment and Jobs Act (IIJA) represents the most significant infusion of investment in our infrastructure since the enactment of the Interstate Highway System in the mid-1950's. Under the IIJA, Congress broadened Buy America requirements for transportation projects. I want to be clear; I am not here today to debate the merits of Buy America. I, along with AGC, wholeheartedly support efforts to expand domestic manufacturing capabilities. However, implementation has been confusing and unclear, creating uncertainty that has led to unintended consequences for construction companies, facility owners, and overall, our nation's infrastructure.

¹<https://data.census.gov/table?q=CB2000CBP:+All+Sectors:+County+Business+Patterns,+including+ZIP+Code+Business+Patterns,+by+Legal+Form+of+Organization+and+Employment+Size+Class+for+the+U.S.,+States,+and+Selected+Geographies:+2020>

My testimony today will shed light on both the obstacles presented by BABAA implementation within our industry and pragmatic actions that could mitigate the challenges for construction companies so that we can rebuild our nation's infrastructure without unnecessary delays and burdens.

And before I begin, I'd like to mention that the challenges and actions that I will be discussing today mostly do not pertain to iron and steel materials. Our members have not reported issues with domestic sourcing of iron and steel, as similar sourcing requirements for them date back to the 1930s and have had a much greater amount of time to adjust their processes to meet requirements.

II. Expansion of Buy America Policies

Buy America policies have been present in federal aid transportation projects since they were included in an amendment to the Surface Transportation Assistance Act of 1982. The primary aim of this legislation was to foster and safeguard specific domestic manufacturing industries by mandating that iron, steel, and manufactured products utilized in federally assisted highway and rail projects be produced within the United States.

Over subsequent years, Buy America requirements expanded to include additional infrastructure sectors, such as water-related projects and aviation. However, the largest expansion of such domestic sourcing requirements was included in the IIJA with the BABAA.

BABAA expanded coverage to all other infrastructure projects funded by federal dollars such as electric utilities and broadband. Moreover, BABAA broadened the scope of covered materials to include all other metals in addition to iron and steel, along with plastic and polymers, lumber, drywall, and glass.

As part of the IIJA, the White House's Office of Management and Budget (OMB) was tasked with providing guidance to industry stakeholders on the specifics of the requirements. Preliminary guidance was issued on April 18, 2022, and the law was slated to take effect less than a month later, on May 14, 2022.² The short notice prompted numerous federal agencies to request sweeping general applicability waivers from BABAA as they were necessary to assess the changes, update policies, train staff, and allow partners to do the same while adjusting supply chains to meet the new requirements. As a reminder, this was during a time when, at least from the construction industry's standpoint, the supply chain crisis and inflation were at its worst.

Despite many of these sweeping waivers being in effect for over six months, it seemed that the law would not come into effect for most infrastructure projects until the beginning of 2023. However, on February 9, 2023, just as federal agencies were finalizing their policies and their partners were finishing administrative requirements, such as material lists and certificates of compliance, OMB released a Notice for Proposed Rulemaking (NPRM), exploring options to expand Buy America requirements beyond what the IIJA entailed.³ The timing of the NPRM also led to federal agencies and their partners, such as state DOTs, pausing from updating their policies, as there was now the

² M-22-11 Memorandum for Heads of Executive Departments and Agencies
<https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

³ Guidance for Grants and Agreements
<https://www.federalregister.gov/documents/2023/02/09/2023-02617/guidance-for-grants-and-agreements>

sudden possibility that the work put into the preliminary guidance might be rendered obsolete, with expanded requirements for more materials and more stringent criteria for already covered materials.

With the final guidance being released on October 25, 2023, many stakeholders have yet to adjust their policies, contracts, and supply chains to ever changing and ever-expanding requirements.⁴ While initially the category of “construction materials” required that the last and second to last manufacturing steps be taken in America to be BABAA compliant, the final guidance expanded those requirements by adding additional manufacturing steps that have to take place in the U.S. For example, aluminum would need to have from initial smelting and melting through to final shaping, coating, and assembly occur domestically to be compliant. In addition to expanding manufacturing requirements, more items were added that were not included in the IIJA and BABAA, including engineered wood and optical fiber. With a two-month timeline for the expansive requirements to go into effect, the industry is once again scrambling to try to meet requirements that were released without due considerations for domestic manufacturing capabilities to meet these requirements and stakeholder’s abilities to adjust their procedures and supply chains.

To illustrate the rushed implementation of these requirements, you can visit many of the state DOT’s websites to see that nearly six months after final manufacturing requirements have gone into effect, many have yet to update their policies, forms, material lists and/or contract language. This is not an attack on state DOTs, but just highlights that such sweeping and expansive requirements necessitate a much greater phase-in period than has been afforded.

So, what does all of this mean for construction companies bidding on a road project, for example? After the state DOT lets a project, construction companies like mine work to put together a bid for the project. We reach out to suppliers to get estimates for the various materials and as part of the estimation process. And we ask for what they refer to as a “Buy America Certification Letter” that guarantees to the contractor that these materials are Buy America compliant. We then keep these certification letters on hand in case of a Buy America audit.

Since the passage of the IIJA, what we have seen is a lot of bids from suppliers come with an asterisk, denoting that the supplier cannot certify that these materials are Buy America compliant. We now have added risk to this project because our suppliers are unable to make this certification. Some companies will now choose not to move forward with a bid, while others will add in extra cost to account for this unknown risk.

In an effort to tackle these issues, AGC chapters throughout the nation have been engaging with their state DOTs on the implementation process. To highlight the work in my home state, Carolinas AGC has been working with the North Carolina DOT through a joint committee to identify possible problems and provide solutions associated with meeting BABAA requirements. I believe that NCDOT has been making positive steps in implementing the new requirements, but it is important to keep in mind that each state DOT is responsible for their own implementation and as such, vary greatly between each other.

⁴ M-24-02 Memorandum for Heads of Executive Departments and Agencies
<https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>

III. Regulatory Burdens Create Uncertainty and Further Increase Costs

Confusion surrounding new Build America, Buy America Act (BABAA) requirements

While AGC supports efforts to bolster American manufacturing capabilities, it is imperative that such efforts are executed with clarity and without unduly burdening those tasked with procuring materials for the construction of our nation's infrastructure.

Unfortunately, OMB's implementation process, as previously highlighted, has been characterized by hasty implementation processes and requirements that insufficiently account for existing manufacturing capabilities, material delivery timelines, and the administrative adjustments necessary to adhere to the new mandates. Put simply, there is uncertainty. In construction, uncertainty means increased costs because contractors have to account for that in their bids to mitigate this risk.

The recent Request for Information (RFI), jointly issued by various agencies, including the U.S. Department of Transportation (DOT), Environmental Protection Agency (EPA), and the Department of Housing and Urban Development (HUD), exemplifies how the Administration has imposed requirements on local agencies and contractors without a comprehensive understanding of the availability of various manufactured products essential to infrastructure construction.⁵ Despite the incorporation of BABAA requirements into contracts since May 14, 2022, federal agencies are still in the information-gathering phase, as evidenced by activities such as this RFI occurring as recently as December 2023.

How can individual contractor firms be expected to adhere to rules and regulations when the enforcing agencies lack an understanding of the availability of materials required for compliance in the first place? While some firms have dedicated or partially dedicated personnel to handle Buy America requirements, T.A. Loving Company does not have such staffers to support these requirements. Our project teams are the ones faced with additional responsibilities to meet Buy America regulations. This is especially challenging if you were a smaller construction company trying to bid on a project, as it adds additional responsibilities to workers already wearing many different hats.

The process for contractors becomes even more complicated if they do work with more than one state or local government. For example, because there is no federal listing of what specific products fall under the categories of "construction materials" and "manufactured products" as outlined in BABAA, a firm working with two state DOTs could face different interpretations for the same construction material. AGC members have noted that a specific product could be classified as "construction material" by one state DOT while another will classify it as a "manufactured product." Under BABAA and OMB requirements, these two classifications require vastly different manufacturing requirements, forcing a contractor to be able to source the same product that goes into a job site, but with different ways of manufacturing that product.

Material Availability is Still an Issue

Since 2020, supply chain disruptions have posed significant challenges for the construction industry. We have experienced increased material delivery times and shortages that have delayed projects. While the American public was well-aware of lumber shortages and the subsequent surge in prices,

⁵ Request for Information Regarding Products and Categories of Products Used in Water Infrastructure Programs <https://www.epa.gov/system/files/documents/2023-11/epa-hq-ow-2023-0396-0001.pdf>

our industry experienced similar scenarios with many other materials that were much less publicized. In many instances contractors encountered difficulties in locating the necessary materials required to initiate or conclude projects.

Just in 2022 and 2023, AGC data reflect that:

- 93% of contractors experienced issues with acquiring materials⁶
- 65% of contractors experienced project delays due to longer material delivery times or shortages.⁷
- 35% of contractors experienced delays due to the government (lack of approvals, inspectors, etc.).

While the worst of the supply chain constraints and inflation seem to be behind us, challenges still exist with long delivery times and certain material shortages. The public comments by stakeholders, including AGC, for the aforementioned Request for Information by the EPA and DOT demonstrate that many materials still require over a year for delivery after an order has been placed. Although the project delivery process may enable contractors to procure these materials in time for projects breaking ground, it can still result in substantial delays in cases where additional materials are needed for an ongoing project.

These shortages and prolonged delivery times are for materials that are not Buy America compliant. With IIJA funding hitting the ground and BABAA requirements coming into effect, compliant materials, if available at all, will experience disproportionate demand that has the potential to exasperate existing supply chain problems.

Currently, my company is having difficulty sourcing the following materials and products:

- Geotextiles (engineering fabric)
- LED lighting
- Electrical Components including switchgear, transformers, controls and switches
- Signal cabinets
- Generators
- Pumps
- Motors
- Aeration equipment
- Ultraviolet disinfection equipment
- Valve actuators
- PFAS treatment systems and media
- Brass products
- Water meters and associated communication devices

⁶ AGC's 2022 Buy America Materials Survey

<https://www.agc.org/news/construction-material-shortages-risk-undermining-infrastructure-projects-most-contractors-struggle>

⁷ AGC & Autodesk Workforce Survey

<https://www.agc.org/news/2023/09/06/new-survey-shows-significant-flaws-nations-approach-preparing-workers-construction-careers-and-how>

While it would be ideal for the industry to have a manufacturing base that can produce all necessary products for the construction of our highways and transit, the reality is that certain essential products lack domestic manufacturers. Even if manufacturing plants were to be established in response to the demand for such products, our industry requires a more phased approach that would allow these plants to actually be built and scaled to meet production demands. Otherwise, stringent BABAA requirements could impede infrastructure construction.

Whenever AGC has raised concerns about the challenges posed by the current BABAA implementation process, the Administration has consistently referred to the waiver process outlined in BABAA and its 15-day timeline for approval or rejection. However, OMB's implementation of the waiver process and historical precedent with waivers paints a different picture.

De-Politicize Buy America Waiver Requests

Past Experience Sets a Bad Precedent

The burdensome Buy America waiver process often leads to unintended consequences. As an example of flaws within the system, on August 28, 2023, the Federal Highway Administration (FHWA) posted for comment a waiver request from the Illinois Department of Transportation (ILDOT) for non-domestic pumps.⁸ The waiver was initially submitted by the Illinois DOT to FHWA on May 21, 2021. How are U.S. DOT and the White House supposed to determine if there are domestic manufacturers or not if the public is not made aware of the waiver request for nearly two and a half years? In this instance, a supplier responded to the posted waiver request and confirmed that they could indeed meet the requirements and supply those pumps. While this appears to be a “good news” story, it is frustrating that two years were wasted in the process.

Among the waiver process' unintended consequences is its politicization, which unfortunately appears to be embedded within the system. For example, on June 24, 2020, a waiver request was made to FHWA for the installation and maintenance of a suicide deterrent system on the Golden Gate Bridge in San Francisco, CA, where an average of 30 people die from suicide each year.⁹ Despite the fact that this critical construction request was made in June 2020, the waiver was not posted for 15 months and a determination on this life-saving waiver request was not made until nearly two years after the initial request, on February 7, 2022. This delay shows that the politicization of waivers is a bipartisan problem occurring across multiple administrations.

To illustrate how slow the process can be, there are waiver requests dating back to 2016 that have not yet been given any determination and are still pending on FHWA's website. For a list of additional examples that demonstrate the slow nature of the waiver process so far, please see Figures 1 and 2 in the Appendix. It is important to note that the examples I have shared with you are waiver requests under Buy America requirements prior to the expansion of requirements under BABAA. With the new BABAA rules, the waiver process could get a lot worse since the number of materials that it applies to is expanded.

⁸ Notice of Buy America Waiver Request – ILDOT
<https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=175>

⁹ Notice of Buy America Waiver Request – Golden Gate Bridge
<https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=157>

The lack of confidence in the Buy America waiver system has led to some unintended consequences. First, as was already mentioned, it causes project delays when a seemingly insignificant component cannot be sourced domestically. Second, project owners and designers may opt to substitute original materials with domestically available alternatives. This might not always be a feasible option and it raises the risk of someone using substandard materials that miss the project's initial goals and requirements. Third, they can change the scope of the project to not require that material. And fourth, contractors either ultimately choose to not bid on a project or build increased costs into the bid to ensure they can account for this uncertainty.

OMB Added More Steps to the Waiver Process

A memorandum released by OMB on October 25, 2023, mandates that federal agencies notify and consult with the Made in America Office before posting proposed waivers for public comment.¹⁰ This additional requirement is poised to further extend the timeline between a project stakeholder's waiver request and the public's opportunity to comment on its necessity.

To clarify, prior to BABAA, a funding recipient (usually the local government agency in charge of the project) had to request a waiver from the federal agency providing the funding and then have that federal agency make a determination on the waiver's merits and necessity after posting the waiver request for public comment. With BABAA and OMB's latest memorandum, a local government agency now has to navigate the following waiver process:

- I. The local agency has to request a waiver and send it to the federal agency.
- II. The federal agency must consult with the OMB on the waiver's scope prior to publishing for public comments.
- III. Once the consultation is finished and modifications are made to the request by the White House, the federal agency can finally post the request for public comments.
- IV. After the comment period ends, the federal agency has to go back to the OMB's Made in America Office to have them make a final decision on whether the waiver is granted or not.
- V. Once the decision by the OMB has been made, the federal agency will inform the local agency of the decision.

While agencies should publish Buy America waiver requests for public comment as soon as they receive them, OMB says otherwise. The BABAA waiver system implemented by OMB is akin to requiring a local school district to contact the Department of Education twice to approve a child's absence note to verify that the child can return to school. In this comparison, the Department of Education thinks the school district is incapable of properly verifying attendance. The president appoints the head of the Department of Transportation, Federal Highway Administration, and Federal Transit Administration. The idea that the highest office in the land cannot trust its own appointed and capable managers and agencies to make decisions is alarming and exhibits the degree to which construction projects are being micromanaged at the highest level of government.

Involving the White House with Buy America Waivers Makes it More Political

The requirement for the White House to have the ultimate decision on any waiver request introduces the potential for the politicization of the waiver process. The requirement for the Made

¹⁰ M-24-02 Memorandum for the Heads of Executive Departments and Agencies, <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>

in America Office to be the final decision maker for waiver approvals and denials is not included in the IIJA. This requirement comes from Executive Order 14005 “Ensuring the Future Is Made in All of America by All of America's Workers,” which directs OMB to be involved in every single waiver request sent to federal agencies.¹¹ The added requirement for federal agencies to communicate and consult with the White House on Buy America waiver requests unnecessarily adds political pressure.

It is important that all Buy America waivers get equal treatment whether it is for an electric vehicle charger, a transit system, or a roadway project. Likewise, the waiver process must be depoliticized. If a waiver is granted, it does not mean that the Trump Administration or Biden Administration does not care about domestic manufacturing or American jobs; it means that they also care about American construction jobs and want to rebuild America’s infrastructure as promised under the IIJA.

Again, AGC is supportive of efforts to expand domestic manufacturing efforts and its members help build those manufacturing projects. However, we are concerned that reality of the timeline necessary to attract and build a stronger domestic manufacturing sector will come at the expense of construction jobs because of project delays caused by an opaque, politicized, and lengthy waiver process.

Industry Stakeholders Take Action

To further demonstrate the concerns that industry stakeholders have with the implementation of BABAA, today, February 15, 2024, AGC joined a coalition of trade associations that includes the American Public Transportation Association, the American Road & Transportation Builders Association, and the National Association of Home Builders in filing a formal request for rulemaking urging the White House to drop its current approach to the waiver process and focus on implementing the requirements at a generalized level and empower federal agencies with broad discretion to fill in the details.

While the groups underscore that they fully support BABAA’s core purpose of strengthening domestic manufacturing, they note that OMB’s focus on managing virtually every aspect of the Build America, Buy America Act requirements is not practical and causes confusion and delay with federal agencies that fund construction projects. In particular, the groups home in on the uncertainty surrounding the OMB’s implementation of the waiver process and historical precedent with such waivers. While OMB sets itself a 15-day approval or denial process for waivers, too often the politics of these waivers creates bureaucratic inertia.

The groups’ filing urges the need for timely waivers, given the record number of projects utilizing federal funding, short-term deficiencies in domestic manufacturing capabilities, increased materials costs and unpredictable lead times for key components. The trade groups put forth recommendations to ensure an effective and “depoliticized” waiver process by allowing all such requests to be treated equally and transparently.

¹¹ Executive Order on Ensuring the Future Is Made in All of America by All of America’s Workers <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/>

The formal petition requests a new rulemaking under the Administrative Procedures Act and a request under the Paperwork Reduction Act to review the way the administration collects Build America, Buy America Act waivers.

IV. FHWA's Manufactured Products Waiver

When the initial Buy America requirements were being implemented for transportation projects in the 1980s, FHWA approved a general applicability waiver for manufactured products, the Manufactured Products Waiver. FHWA approved the waiver after it found that granting the Manufactured Products Waiver would have an insignificant economic impact on all materials covered under waiver since “foreign competition in natural materials was not significant due to their high transportation cost and the lack of availability of petroleum-based products from domestic sources in sufficient and reasonable quantities.” The most recent completed review of FHWA's Manufactured Products Waiver, in 2013, found that the initial reasoning still applied and that it was necessary to continue the use of the waiver to avoid significant project delays and cost increases for products that made up a minor portion of the total material cost of FHWA-assisted projects.

Ever since its inception in 1983, the Manufactured Products Waiver has been reviewed and upheld by both Republican and Democratic administrations, stating that the initial reasons for its existence hold true. It is currently undergoing review once again, in accordance with the requirements of the BABAA, which mandates a review of every prior general applicability waiver at least every five years. This long-standing waiver now faces the possibility of being removed, modified, or replaced.

While the outcome of the Manufactured Products Waiver review remains uncertain, highway contractors have expressed serious concerns about potential impacts if the handling mirrors other aspects of BABAA implementation. To illustrate the construction industry's concerns, in May of 2023, 65% of AGC and American Road and Transportation Builders Association members stated that removal of the waiver would have a major effect on the time and cost of their projects.¹²

Additionally, FHWA has previously stated that “it is very difficult to identify the various materials and then trace their origin” regarding manufactured product components.¹³ As BABAA's requirements insert cost of component tracking requirements to manufactured products in addition to tracing the various materials in a specific product, it will become even more burdensome and difficult to determine whether a specific product meets all requirements.

To further exemplify the need for a continued waiver, certain products and components are completely unavailable domestically and lack the conditions to be able to meet the manufacturing demands in the near future. The Department of Energy stated in its LED Manufacturing Supply Chain Report that “[v]irtually no LED lamp manufacturing is taking place in the United States today.”¹⁴ The lack of any available domestic raw materials, such as gallium, and the lack of currently

¹² Survey of Transportation Construction Contractors on Buy America Compliance
https://www.artba.org/wp-content/uploads/2024/01/Summary-Contractors-Buy-America-survey-5-23.pdf?mc_cid=7d1cdbb08a&mc_eid=99055f418c

¹³ FHWA Manufactured Products Waiver Final Notice
https://archives.federalregister.gov/issue_slice/1983/11/25/53097-53104.pdf#page=3

¹⁴ Department of Energy - 2020 LED Manufacturing Supply Chain
<https://www.energy.gov/sites/default/files/2021-07/ssl-2020-led-mfg-supply-chain-mar21jul21.pdf>

available manufacturing make it all but impossible to be compliant with BABAA. As a result, American-made LED lighting on roads does not exist and will not exist for the foreseeable future.

Any rushed changes to the Manufactured Products Waiver which could restrict the source of LED lighting components could dramatically alter the safety of American roads and delay completion of projects. AGC urged FHWA to research material manufacturing capacity for all permanent products used in FHWA's projects before deciding to alter the current Manufactured Products Waiver to avoid any unintended consequences, particularly as it relates to safety.

V. Buy America Changes Require a Phase-In Period

Adjustments to Supply Chains Take Time

When BABAA was coming into effect, nearly all federal agencies that provide financial aid for construction projects passed sweeping and time limited general applicability waivers. This was not because agencies don't support domestic manufacturing, but rather aimed at allowing all involved stakeholders, including manufacturers, local government agencies, and contractors, to adapt supply chains, train their workforce for new requirements, and adjust administrative procedures. As the requirements of the law have evolved to become ever more complex and demanding since April 2022, the need for an additional phase in period has become even more apparent.

Numerous local AGC chapters are actively collaborating with their state DOTs across the nation to update their BABAA requirements. Unfortunately, implementing changes just 60 days after a final rule is impractical and irresponsible.

Furthermore, AGC members have noted that certain local agencies still have not taken action to update their BABAA requirements or are entirely unaware of the new requirements. In such instances, contractors find themselves in an increased risk environment where they are still ultimately liable for compliance with BABAA, yet the agencies they work with are not fully prepared to provide details, documents, or answers on how to properly comply.

While I would consider the previously mentioned partnership between Carolinas AGC and NCDOT a success so far, it is crucial that the permitting, design, and engineering communities work together to mitigate potential issues. From what we have experienced, my state's permitting agencies are overwhelmed with the amount of work. A waiver that makes sense is critical to ensuring that funding is put the work and projects break ground.

All Buy America Waivers Should be Treated Equally

In September 2022, FHWA released a proposed waiver for BABAA seeking public input on the necessity of a BABAA waiver for EV Charging Stations. The proposed waiver cited information on the relevant manufacturers, their stated production capacity, estimated demand for compliant charging stations, and asked for public feedback on their findings. In addition, the proposed waiver offered a timeline for a phase in period, where the BABAA requirements would increase gradually year over year until the manufacturers had adequate time to be able to meet the requirements fully.

AGC contends that such outreach and research should be performed to a similar degree of rigor for other manufactured products and construction materials subject to BABAA. That is indeed why it is simultaneously refreshing and troubling to see the EPA, DOT, HUD and others releasing a joint

RFI on the availability of water infrastructure just this past December, when BABAA requirements are well into the implementation process and are beginning to appear on contracts.

As specifically outlined in the IIJA, the Secretary of the U.S. DOT is to work with the Hollings Manufacturing Extension Partnership to provide annual reports on the status of domestic sourcing requirements to various relevant House and Senate committees, including the Transportation & Infrastructure Committee. As part of the annual report's requirements, the Secretary is to provide updates on the challenges and gaps in the domestic supply base identified in carrying out the implementation of BABAA. As far as we are aware, these reports have not yet been provided to this and various other committees. Such reports would aid contractors in identifying potential challenges during the bid process, allowing for awareness of supply availabilities, reduction of uncertainties, and minimizing the workload for each contractor to provide optimal value for the American taxpayer.

VI. Conclusion

As previously noted, AGC supports efforts to boost domestic manufacturing. Unfortunately, the process by which the new BABAA requirements are being implemented leaves contractors with increased risks and liabilities while OMB continues to implement ever expanding and stringent requirements without providing transparency and data to back up their implementation timelines.

I request that the committee members work to ensure that the goals of these Buy America requirements are successful by working towards a quick and transparent waiver process and providing flexible requirements that allow federal and local agencies to rebuild their infrastructure. I thank the subcommittee for the opportunity to testify today and appreciate its continued efforts to help improve our nation's infrastructure. I look forward to answering any questions you may have.

Appendix

Figure 1 – Notable Buy America Waivers That Have Been Approved or Withdrawn

Agency	Waiver	Date of Request	Date of Approval / Withdrawal	Days to Determine
FHWA and MARAD	Medium Voltage (MV) Cable Reel System	9/8/2021	7/27/2022	322
FHWA	California Golden Gate Bridge	6/26/2020	2/8/2022	592
FHWA	I-74 Bridge Recreational Trail	3/20/2020	10/1/2021	560
FHWA	Alaska Inter-Island Ferry	9/1/2018	2/19/2020	536
FHWA	Wyoming Avalanche Barrier	3/9/2017	9/29/2021	1665

Figure 2 – Notable Buy America Waiver Requests That Have Not Yet Been Determined

Agency	Waiver	Date of Request	Days Since Date of Request
FHWA	NJ/NY SeaStreak Ferry Vessels	7/29/2016	2748
FHWA	ILDOT Submersible Pumps	6/9/2021	972
FHWA	Vermont Submersible Pumps	7/25/2017	2387
FHWA	Mount Vernon Library Commons Project	6/6/2023	245
DOE	LEDs for Berlin School District	3/1/2023	342
DOC	Broadband for BEAD Program	8/1/2023	189