

BABA Waiver Directions (Exhibit 3)

Updated 2/19/2025

Since the implementation of Build America Buy America (BABA) for construction materials, we have all been learning about the process used for determining Allowable De Minimis Costs for construction materials. In this e-mail, you will find directions on how to complete the attached Buy America Exemption Tracking Tool & details regarding **Partial Tabulation** of Total Applicable Project Costs for determining Allowable De Minimis Costs for construction materials in Step 2 of the Buy America Exemption Tracking Tool.

Directions on How to Complete Buy America Exemption Tracking Tool

General Notes

- This tool can be found in two locations:
 - WisDOT pantry forms site (<https://awpkb.dot.wi.gov/Content/constr/Pantry/StatewideForms.htm>) under the WS forms
 - Highway Construction Contract Information (or HCCI), Contracting Information website (<https://wisconsindot.gov/Pages/doing-bus/contractors/hcci/ctrct-info.aspx>) under Forms: Buy America
- If your project uses all domestic products (i.e. you are not using the Iron/Steel exemption OR construction materials de minimus waiver) you do not need to have the contractor fill out this tool. It would not be a requirement of the materials documentation.
- It is the contractor's responsibility to complete this tool. The project staff is responsible for checking over the information the contractor entered in this tool and making sure the submitted receipts match the entered costs. The project materials coordinator will use this tool to create DT1310 entries for applicable items. The Buy America exemption tracking tool, with receipts, should be attached to the completed, signed DT4567 form.
- There are also 2 tabs in this tool with examples to follow. The final tab shows an excerpt from the CMM section 228.5, which outlines the Buy America requirements.

Completing the Form

- Step 1 Iron and Steel Tab:
 - The first tab in this tool is the Iron and Steel exemption, labeled Step 1 Iron and Steel. All the yellow cells should be completed. This information will transfer automatically to step 2. If your project does not need to use an exemption for iron and steel, the cost table and signature block will remain blank. Otherwise, the tool is the same as the previous Buy America exemption spreadsheet, except the contractor should complete the tab and sign it.
- Step 2 Construction Mtl's Tab:
 - The second tab in this tool is the Construction Materials exemption, labeled Step 2 Construction Mat'ls. All the yellow cells should be completed. If your project does not need an exemption for construction materials, this tab will remain blank.

- The let date must be entered in step 1. If a let date prior to November 14, 2023, “NO” will show up for the Bid Let Date Meets Requirements? cell. These projects pre-date the de minimis and small grant waivers and there are no exceptions available for construction materials.
- The contractor should be entering the change order total cost and applicable project cost in Step 2. Total Approved Change Order Costs contribute toward determining small grant exemption eligibility, and Total Applicable Project Costs are used to calculate the Allowable De Minimis Costs.
- **Total Applicable Project Costs:**
 - **Partial Tabulation** of Total Applicable Project Costs is now allowed. Reference the attached e-mail for official BTS guidance. Additional guidance is included below (which originally came from NE region).
 - The prime contractor must collect & submit all invoices used for determining the total applicable project costs.
 - The contractor again should be completing this tab and signing it.

Partial Tabulation Guidance

The department updated their guidance and is now allowing partial tabulations of “Total Applicable Project Costs” for determining Allowable De Minimis Costs for construction materials in Step 2 of the Buy America Exemption Tracking Tool. Before this change in guidance, a contractor had to tabulate the applicable project costs which required them to submit all material invoices for iron/steel, construction materials, and manufactured products from all contractors and subcontractors on a contract. This total would be the applicable projects costs. Then they would run 5% against that total and would then take the lessor of that total or \$1,000,000.

The contractor can now utilize the de minimis waiver by partial tabulation of applicable project costs. This is done by providing invoices for materials that are subject to a domestic preference requirement to establish a sufficient basis for exemption of a construction material from BABA. An example would be, if you had 20 U.S.-made wood sign posts that cost \$100 each on the invoice and provided that from their signing sub, they could then take 5% of that item to get an allowable waiver total of \$100. If their nylon washers (not BABA compliant) cost \$0.50 each and they had to use 40 of them for the job, they would put \$20 towards that \$100 waiver amount. The contractor would be allowed to provide more material invoices for items within the categories to allow a higher exemption total. In theory, if a project had \$21 million in total applicable project costs, then their total de minimis waiver would be \$1 million as that is less than the \$1.05 million calculated based on 5% of \$21 million in applicable project costs. The expectation would be that only the prime is submitting this, and only one Buy America Exemption Tracking spreadsheet is provided per contract. We still want to ensure that a contractor has utilized all avenues for being Buy America compliant for construction materials as we know a lot of our standard items are relatively easy to get BA documentation for. The intent is not to make it easier for a contractor to start sourcing non-BABA compliant construction materials.