



States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.<sup>4</sup>

In addition to small business member contractors that build private and public works projects, ABC also has large member general contractors and subcontractors that perform construction services for private sector customers and federal, state and local governments. For example, ABC members won 57% of the \$128.73 billion in direct prime construction contracts exceeding \$25 million awarded by federal agencies during fiscal years 2009-2021. These federal contractors provide subcontracting opportunities to large and small contractors in the specialty trades and deliver taxpayer-funded construction projects on time and on budget for their federal government customers.

ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

## **Response to the Request for Information**

### **I. The Construction Industry Already Faces Significant Supply Chain Challenges**

The U.S. construction industry currently faces significant headwinds in the form of supply chain disruptions, unprecedented materials cost inflation and declining investment. Our concern is that immediate implementation of Buy America requirements could exacerbate these disruptions and further increase costs for contractors and taxpayers.

Despite access to vaccines and decreasing case numbers, the ongoing COVID-19 pandemic continues to cause significant supply

Finally, the challenges that the industry is facing have led to a decline in overall investment in the construction industry. In the first quarter of 2022, investment in nonresidential structures declined at a rate of 0.9%, following contractions in nine of the past 10 quarters.<sup>7</sup>

## **II. Buy America Implementation Should Be Delayed**

The OMB should consider the supply chain challenges currently facing the construction industry, as outlined above, in its implementation of these requirements. Given the unprecedented nature of the issues facing the industry, the OMB should delay implementation of domestic preference requirements for construction materials on federally assisted projects. Instead, the OMB should conduct extensive studies and seek additional public comment to ensure effective implementation of Buy America requirements.

- 1. Multiple federal agencies have already provided six-month Buy America waivers.**

## **2. The OMB should consider agency staffing needs for an expected high volume of waiver requests.**

As noted in the OMB's initial guidance on implementing the new Buy America requirements, the IIJA allows for several categories of waivers that recipients can apply for when the requirements may be unfeasible.<sup>11</sup>

Given the supply chain challenges outlined above, it is highly likely that federal agencies will face an extremely high volume of waiver applications, especially considering the OMB's guidance that "to the greatest extent practicable, waivers should be targeted to specific products and projects."<sup>12</sup> Many products and projects may qualify for the nonavailability or unreasonable cost waivers given the difficulty contractors already face in obtaining affordable construction materials.

The OMB should consider the impact of a flood of waiver applications on federal agencies, which are already working to hire enough employees to effectively distribute IIJA funding and procure additional direct federal construction contracts above baseline spending.<sup>13</sup> Agencies may not have sufficient staff to process these applications in a timely manner, which would lead to additional delays and increased costs. The OMB should consider how waivers may be granted more broadly to alleviate this concern.

## **3. Separate rulemakings for each construction material would lead to more effective implementation.**

Finally, ABC urges the OMB to undergo individual study and rulemaking processes for each of the five construction material categories.

There are a wide range of differences across the different materials, including domestic capacity and manufacturing processes. Applying a uniform standard across all categories may be considered arbitrary and capricious, as it fails to take into account these important differences.

Instead, by moving forward with a formal rulemaking process for each material, the OMB and other federal agencies will be able to thoroughly research standards needed for each material, as well as receive a higher number of public comments than is feasible during this RFI. This would ultimately lead to more informed and effective Buy America requirements.

## **Conclusion**

While ABC supports strategies to expand domestic jobs and manufacturing to avoid global supply chain disruptions and capture economic benefits within America, Buy America policies need to be balanced with safeguards against increased costs and/or

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<sup>11</sup> See OMB Memo M-22-11, pg. 6: <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.

<sup>12</sup> Ibid

<sup>13</sup> See "DOE: We're hiring 1,000 workers in infrastructure push," E&E News, May 24, 2022: <https://www.eenews.net/articles/doe-were-hiring-1000-workers-in-infrastructure-push/>.

delays of infrastructure projects funded by the federal government and ultimately taxpayers. The OMB should carefully consider our recommendations to ensure these requirements can be implemented with minimal disruptions to these critical infrastructure projects.

Thank you for the opportunity to submit comments on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Brubeck", is positioned above a horizontal line. The line is composed of several parallel, slightly wavy lines, suggesting a digital signature or a scan of a physical signature.

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