

July 1, 2022

Secretary Marcia Fudge
Department of Housing and Urban Development
451 7th Street SW
Washington, D.C. 20410

RE: RFI – Document Number 2022-11729

Dear Secretary Fudge:

The National Utility Contractors Association (NUCA) appreciates the opportunity to submit comments regarding the request from the Department of Housing and Urban Development on the implementation of Build America, Buy America Act (BABAA) requirements in the implementation of the Infrastructure Investment and Jobs Act (IIJA) and other federal projects.

The National Utility Contractors Association (NUCA) represents represent construction contractors, manufacturers, and distributors who build and maintain a wide range of underground facilities and transportation infrastructure. Member companies provide the manpower and equipment needed to build, repair, and maintain the infrastructure needed for water and wastewater infrastructure, gas distribution, broadband, electric and as well as the nation’s surface transportation system. NUCA has over 1,800 member companies across 35 chapters in states and regions across the nation, and as the only nationwide trade association representing the American utility construction industry, NUCA members are uniquely positioned to comment on the major investment in subsurface utility infrastructure.

NUCA strongly supported the Infrastructure Investment and Jobs Act (H.R. 3684), which authorized badly needed funding for a wide range of American infrastructure sectors, including the nation’s dilapidated water, wastewater, and stormwater systems, as well as nationwide broadband buildout. We also support domestic manufacturing of our industry’s components, but for a significant percentage of our industry products and needs that is not currently possible.

As a directly relevant party, NUCA wishes to offer the following comments in response to HUD’s questions:

The utility construction industry faces severe supply chain challenges

Our industry currently faces severe supply chain challenges, leading to chronic shortages of essential construction materials. NUCA urges that broad waivers be considered in the short term, and that pipe (ductile iron, concrete, plastic, etc.), fittings, valves, etc. be considered manufactured goods and not construction materials.

Congressional intent regarding the definition of “construction materials” as found in BABAA outlines materials which go through an extensive manufacturing process (lumber, non-ferrous metals, glass including optics glass, drywall, and plastic and polymer-based materials). The definition should be kept limited in scope to avoid uncertainty and ambiguity.

Additional items under consideration as “construction materials” should be subject to a future comment period, to allow for a transparent process and public input. In instances where products are part of a clearly manufactured product (i.e., fiber optic cable) the construction material (optic glass) should be considered a manufactured product. This likewise extends to plastic, non-ferrous metals, and other materials used in the production of a clearly manufactured product (valves, pipe, etc.).

We therefore recommend that the federal government conduct a thorough overview survey of domestic manufacturing capabilities of essential materials, and over a transitional period prioritize those where a domestic manufacturing base exists while issuing general waivers for those where the domestic manufacturing base is not yet sufficient.

NUCA members stand ready to assist the federal government and its agencies in determining which products should be covered. For instance, NUCA members have in the past successfully applied for EPA AIS waivers on ductile iron ball and socket restrained joints (“River Crossing Pipe,”) and on 4-inch through 24-inch proprietary restrained joint ductile iron fittings, as these products are not currently manufactured in the United States.

Domestic manufacturers of essential project materials, including ductile iron materials, are currently unable to meet demand, with NUCA members reporting average delays of up to 12 months on pipe, valves, fittings, and megalugs (a type of ductile iron pipe restraint). Non-domestic lead times for essential water main construction products – hydrants, mechanical restraints, bell restraints, and valves, for example – average 16-week to 18-week lead times, with double or triple that for what domestic manufacture exists. While gate valves and brass butterfly valves are mostly made in the U.S., lead times for American-made valves are around 40 weeks, while East Asian-sourced valves are at 25-30 weeks. There are also reliability issues obtaining these U.S.-made valves because of domestic labor shortages. NUCA members have also reported major difficulties in sourcing concrete pipe, as well, with one manufacturer member in Texas reported receiving calls from North Carolina seeking product.

NUCA urges that fiber optic cable be specifically exempted from Buy America requirements, in part due to the current inability for suppliers (both domestic and international) to meet demand. Broadband contractors have reported severe shortages of critical raw materials and manufactured goods, including fiber optic cable, splice closures, pedestals, handholes, aerial hardware, microchips, and wiring harnesses. High density polyethylene (HDPE) conduit lead times, on average, are reported as 16-weeks to 24-weeks, and loose tube fiber has a reported wait time of 52-weeks to 104-weeks. For microfiber – the most important component of a proposed broadband project – contractors have reported lead times of 48-weeks to 52-weeks.

Case-by-case implementation and general waivers

NUCA asks for HUD to implement BABA requirements on case-by-case rolling basis. Government-wide waivers should be implemented while dialogue with industry stakeholders continues and standards are developed. The abbreviated period of the HUD RFI is not sufficient time to gather concise information from an industry as complex as ours.

NUCA expects expanded BABA requirements in the current market will significantly drive up the cost of projects, materials. Several NUCA members have conveyed that they expect the price of certain materials to increase by up to 70% based on BABA exacerbation of ongoing supply chain issues. These increased costs will cause allocated IJA resources to not go as far, which means fewer projects and fewer jobs. These infrastructure project reductions, combined with existing labor shortage affecting all

aspects of the construction industry, will hamper the Biden Administration's efforts to effectively implement IIJA.

NUCA supports domestic manufacturing of our industry's products, but recognizes that cannot happen in the timeframe necessary to avoid holding up critical infrastructure projects and jeopardizing job creation. **Rushing implementation of BABA before evaluating market availability will hurt jobs, businesses, and prove ineffective given supply chain issues/shortages and the labor shortage.**

Therefore, NUCA urges the Administration to consider issuing general waivers, and apply BABA requirements on a rolling basis as domestic availability of specific items reaches a reasonable threshold.

Again, we thank you for your leadership in the effective implementation of this important legislation. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Doug Carlson', with a long horizontal flourish extending to the right.

Doug Carlson
Chief Executive Officer