

# 5 Things Contractors Should Know About the Infrastructure Act & the Inflation Reduction Act

An outline of current legislation for government-funded projects

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**T**ogether, the 2021 Infrastructure Investment and Jobs Act (Infrastructure Act) and the 2022 Inflation Reduction Act (IRA) authorized hundreds of billions of dollars for domestic infrastructure and energy projects — a bonanza for contractors. But those funds do not come without strings attached; there are requirements for firms looking to secure construction projects funded by the Infrastructure Act or the IRA.

The Infrastructure Act authorized roughly \$550 billion for federally owned projects and approved state or local projects receiving federal funding, with earmarked funds for bridges, roads, transit systems, railways, energy security systems and other infrastructure projects. The IRA authorized approximately \$700 billion in spending for a broad range of programs, with hundreds of billions of those dollars allotted for projects focused on drought resiliency in the Western states, energy security and combating climate change.

While the legislation's benefits are massive and clear, the requirements remain opaque. To realize the full value

of this legislation, contractors must meet fairly stringent federal and agency requirements, as well as applicable state or local requirements. Savvy contractors will have a firm grasp on the legislation.

## Build America, Buy America Act Requirements

Both the Infrastructure Act and the IRA require domestic sourcing consonant with the 2021 Build America, Buy America Act (BABA), with both acts requiring 100% domestic steel and iron use on projects. The Infrastructure Act goes further, requiring construction materials and manufactured products to be American-made goods based on technical definitions, which evaluate the manufacturing processes and/or ratios of the costs of foreign and domestic components. The Infrastructure Act also adds structures, facilities, equipment, optical fiber, lumber, water and broadband infrastructure projects to the prior road and rail projects, to the list of improvements that must be compliant with the expanded BABA measures. Finally, the Infrastructure Act mandates compliance with the related Make PPE

In America Act enacted during the peak of the pandemic in 2021 to support U.S. businesses producing personal protective equipment (PPE).

The IRA includes several unique applications of BABA as well, such as an adjusted domestic-percentage evaluation of the total cost of mined, produced or manufactured components to become part of the project. The adjusted domestic-percentage threshold depends on the commencement date of construction and generally increases through fiscal year 2026-2027. The IRA reduces the adjusted domestic percentage, however, to allow offshore wind facilities to encourage additional development within this sector.

BABA requirements are poised to become even more stringent in the coming months. In his recent State of the Union address, President Biden announced the introduction of new BABA guidance that will require all manufacturing processes for certain construction materials occur domestically.

## Davis-Bacon Act Requirements

Both the Infrastructure Act and the IRA require contractors to meet the federal prevailing wage rates, at a minimum; however, California contractors (and some others) must meet the state prevailing wage rates, which are nearly always higher. This places the onus on contractors to keep and maintain accurate records of hours worked and wages paid, while requiring the same of their subcontractors. In certain scenarios, the IRA requires prevailing-wage compliance to continue through defined alteration and repair periods after completion of construction. A failure to comply with the Davis-Bacon Act — a 1931 U.S. federal law requiring laborers and mechanics be paid the local prevailing wage on public works projects



— may not only jeopardize project funding and a contractor's bottom line, but also expose contractors to criminal liability based on, among other things, false claims for erroneous or omitted certified payrolls.

The IRA also imposes Davis-Bacon apprenticeship requirements on projects based on labor hours. For construction projects that began in 2022, 10% of the labor hours must be performed by apprentices; 2023 projects require 12.5%; the figure is 15% for subsequent years. Additionally, if a company employs four or more individuals on any single project, it must also employ at least one registered apprentice on that project.

### Labor Force Requirements

The Infrastructure Act reauthorized the Disadvantaged Business Enterprise (DBE) program, and both the Infrastructure Act and the IRA require compliance with

DBE. But this is another issue that may, in some cases, be rendered moot by more stringent state or local requirements. Under the DBE program, contractors must certify eligibility and compliance. Both acts include anti-human-trafficking provisions. The Infrastructure Act includes additional forced labor restrictions to ensure illegal materials and products made with forced labor are not purchased with Infrastructure Act funds. Complying with the forced labor rules potentially requires formal, written code of conduct policies, annual trainings and implementation of internal controls.

### IRA's Green Building Requirements

The IRA set aside nearly \$1 billion in grants for adoption of energy codes meeting specific standards, as well as zero-energy "stretch" codes. It also allocates funds to the U.S. General

Services Administration for green retrofits of federal buildings and more than \$2 billion for installation of low-embodied carbon materials and products in federal renovation or construction projects.

### Consequences of Failure to Comply

The acts include other requirements, and a contractor who is the successful bidder on a scope covered by the Infrastructure Act or the IRA must ensure it meets all the applicable standards. Failing to meet its obligations, the contractor faces far more liability than the typical contract remedies for a breach. A noncompliant contractor exposes themselves to False Claims Act liability, performance evaluations and even suspension or debarment. Because of the complexity in defining, evaluating and establishing compliance, we advise contractors to seek legal counsel familiar with the Infrastructure Act, the IRA and their related requirements. ▲

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