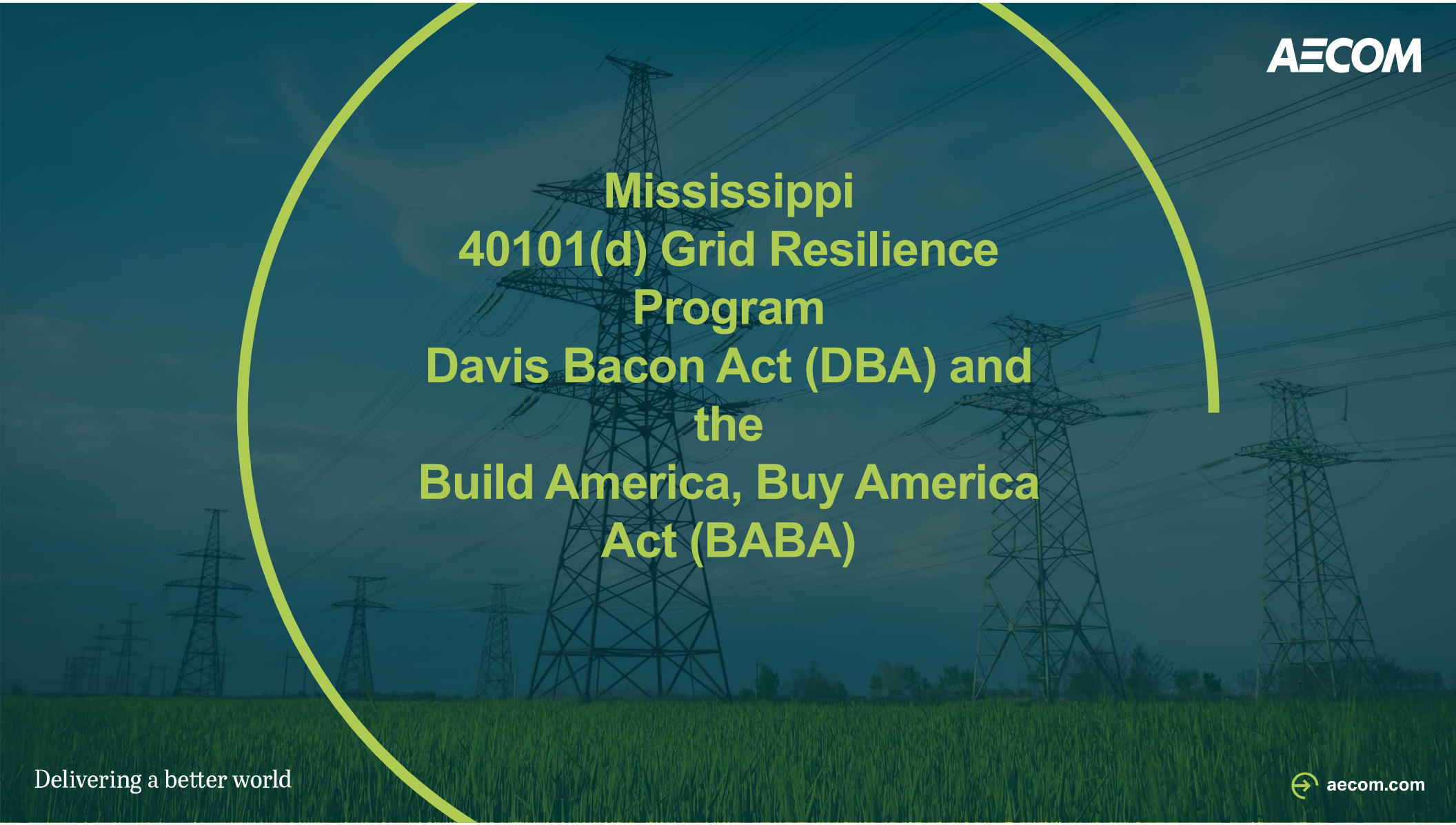

Mississippi 40101(d) Grid Resilience Program Davis Bacon Act (DBA) and the Build America, Buy America Act (BABA)

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History

Davis–Bacon Act of 1931

• Originally passed in 1931 under the Herbert Hoover Administration

• Initiated to ensure the fair treatment of workers under the Depression

• Named after sponsors of the bill
  - **James Davis (Senator-PA)**
  - **Robert Bacon (Representative-NY)**

Davis-Bacon Act (DBA)

• Applicable for Direct federal contracts

• Construction, alteration or repair >$2K

• Locally prevailing wage & fringe benefits

• Weekly wage payments

What Does Davis Bacon Require of Subrecipients?

- Ensure that laborers and mechanics are paid at least the applicable prevailing wages according to the appropriate Department of Labor wage determinations, including fringe benefits, for all hours worked **on a weekly basis.**
- SAM.gov - source for wage determinations
- Ensure that applicable Davis-Bacon Act clauses and applicable wage determinations are flowed down to all subrecipients and contractors.
- Maintain an accurate record of hours worked and wages paid, including fringe benefit contributions, and **submit certified payrolls on a weekly basis to DOE** via the free software application LCPtracker.
- Complete and submit the Davis-Bacon semiannual report to DOE by April 21 and October 21 of each year in which funds are received.

Who is Covered and Employer Responsibilities?

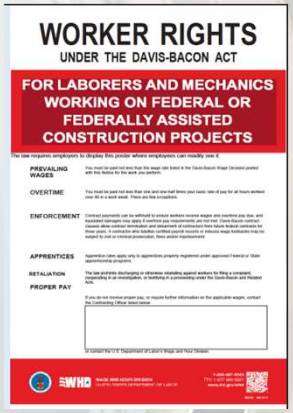
- **Applies to all businesses who:**
  - Employ Contractors and Subcontractors
  - Perform work on federal construction OR federally funded projects

- **Job categories include Laborers and Mechanics (workers whose duties are manual in nature)**
  - Job types not covered: Supervisory position at the job site, clerical and professionals

Certified weekly payroll records must still be submitted even if no construction was performed during the week.

Employer Requirements

- Post completed Davis-Bacon Act poster at job sites
- Post Davis-Bacon wage decision (found in SAM.gov) OR Project Wage Rate Sheet
- Weekly Certified Payroll
  - WH-347 payroll form OR
  - Free LCPtracker for payroll reporting https://lcptracker.com/solutions/lcptracker
- Prime contractor to review all subcontractor payroll forms before submission
- Payroll retention for 3 years
- Interviews with staff encouraged to ensure they are receiving the correct wage



Recipient Responsibilities – Solicitation and Contract Management

- Solicitation and Contract Requirements:
  - Include the Correct Wage Determinations in Bid Solicitations and Contracts
  - Include DBRA Requirements in All Contracts:
    - For example: “By accepting this contract, the contractor acknowledges and agrees to the terms provided in the DBRA Requirements for Contractors and Subcontractors Under EPA Grants.”
- After Award of Contract:
  - Approve and Submit Requests for Additional Wages Rates
  - Provide Oversight of Contractors to Ensure Compliance with DBRA Provisions

Examples of Common DBA Compliance Issues

- Misclassification of laborers and mechanics
- Failure to pay full prevailing wages and fringe benefits for all hours worked (including overtime)
- Incomplete or inaccurate payroll recordkeeping, including not counting all hours worked or not properly recording hours worked in each classification by an individual
- Failure to submit certified payrolls weekly
- Failure to post DBA poster and applicable wage determination at job site
    - AECOM will provide training to ensure compliance

What is the Davis-Bacon Related Acts (DBRA)?

- **Additional provisions for federally funded construction projects**
  - Includes the Fair Labor Standards Act, Contract Work Hours and Safety Standards Act, Copeland (Anti-Kickback Act)
- **Fair Labor Standards Act (FLSA)**
  - Sets federal minimum wage
  - Defines overtime as more than 40 hours per week
  - Defines overtime pay as time +1/2 base wage (BW) + standard fringe benefits
- **Contract Work Hours and Safety Standards Act (CWHSSA)**
  - Requires overtime pay for workers on construction contracts > $100,000 that work
  - Defines overtime as more than 40 hours per week
  - Defines overtime pay as time +1/2 base wage (BW) + standard fringe benefits
- **Copeland (Anti-kickback) Act**
  - Only applies under Davis-Bacon Act / Davis-Bacon Related Acts
  - Prohibits kickbacks
  - Regulates deductions
  - Requires payroll certification

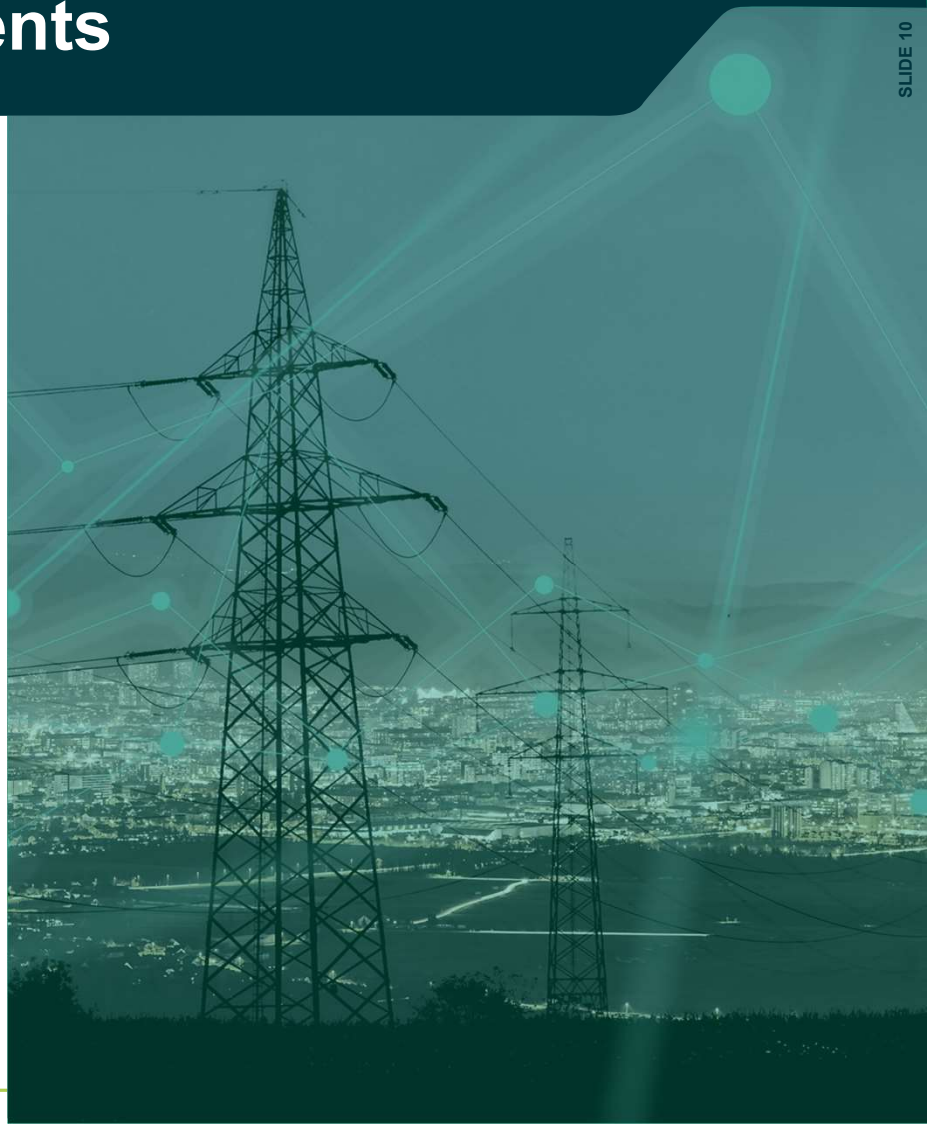
What is the Build America, Buy America (BABA) Act?

- The 2021 Infrastructure Investment and Jobs Act (also known as the Bipartisan Infrastructure Law) included the Build America, Buy America Act (BABA)

- "None of the funds made available for a Federal financial assistance program for infrastructure…may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." (P.L. 117–58, section 70914)
- BABA applies to an entire infrastructure project, even if it is
  - funded by both Federal and non-Federal funds, or
  - funded under more than one federal awards

Items Subject to BABA Requirements

- **Iron and Steel:** Manhole covers, nails, bolts, site steel, sheet piling
- **Manufactured Products:** Electric vehicle charger, panels, heat pumps
- **Construction Materials:** Non-ferrous metals, Plastic & Polymer-based products, glass, fiber optic cables, Lumber, Drywall, Engineered wood



Compliance Roles

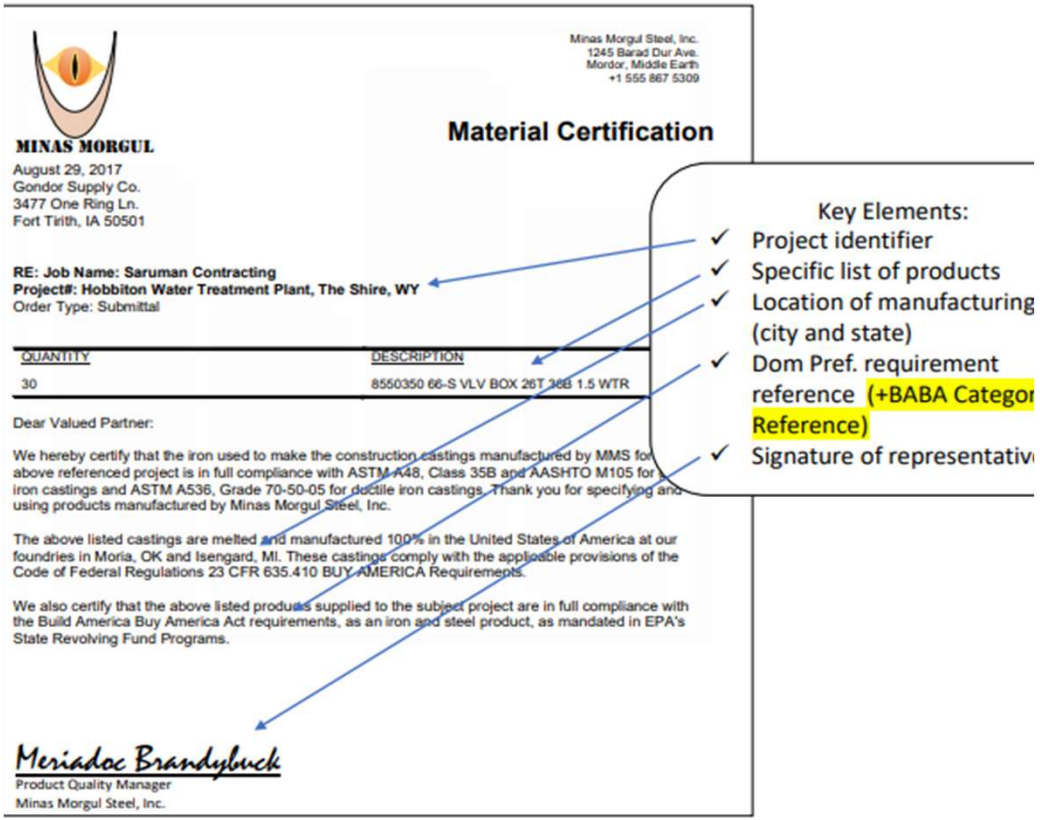
Manufacturers	Provide signed certification letters for product
Contractors	Verify products used on-site are compliant prior to installation
Recipients	Collect compliance documentation for products received
Programs/Projects	Maintain documentation for products received (hard copy or electronic)

BABA Compliance

- **HOW CAN PRODUCT COMPLIANCE BE DEMONSTRATED?**

Manufacturer's documentation for the product(s) to include:

1. A project identifier (name, location, contract number, or project number)
2. The identity of the product(s) being supplied to the project (can be simple)
3. Location(s) of manufacturing being certified (city and state) a. Minimum: documenting final point of manufacturing in the United States
4. Signature of company representative making the certification (on company letterhead, signature can be electronic)
5. A statement attesting that the products supplied are compliant with BABA requirements (the "certification") a. Will list which category of product they are certifying (e.g., meets component cost test for manufactured products).



Waiver Types – Agency can waive BABA requirement if it finds that -

- Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).
- Applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);

Key Takeaways of BABA Act

Materials	Forms of Financial Assistance	Waiver Types	Waiver Rationale	Waiver Process
• Iron and Steel • Manufactured Products • Construction Material	• Grants • Cooperative Agreements • Direct Assistance • Loans and loan guarantees	• Non availability • Unreasonable Cost • Public Interest (e.g., de minimis standards, minor components)	• Conditional, where applicable • Limited by project, award or time	• Agency consults with OMB (as needed) • Agency publishes for public comment • Agency submits to Made In America Office (MIAO) for review

AECOM will provide training to ensure compliance

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