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June 6, 2022

Celeste Drake  
Director of Made in America Office  
Office of Management & Budget  
725 17<sup>th</sup> Street NW  
Washington, DC 20503

**RE: Supplemental Comments on Notice of Listening Sessions & RFI; OMB-2022-0005**

Dear Director Drake,

On behalf of the Associated General Contractors of America (AGC), I would like to thank the Made in America Office (MIAO) within the Office of Management and Budget (OMB) for soliciting input from the construction community regarding the clarity of definitions and usage of the terms included in the Build America, Buy America Act (BABAA).

AGC submitted comments in response to your RFI on May 23, 2022. With your office extending the comment deadline to June 6, 2022, AGC undertook additional outreach with its members to help provide OMB with more information about the impact of these new requirements amid ongoing supply chain disruption. AGC provides the comments below to supplement its initial response to this RFI.

**I. AGC Maintains that OMB and Federal Agencies Must Finalize BABAA Rules and Firmly Establish a Functioning Waiver Process BEFORE Including BABAA Requirements in Contracts**

AGC still maintains and strongly urges OMB to reconsider its initial guidance to require applicable construction contracts awarded on or after May 14, 2022, to include BABAA requirements. Instead, OMB should delay the inclusion of BABAA requirements in new contract awards and any existing awards until OMB and federal agencies have:

- Put forth final BABAA rules for applicable federal construction programs and grants;
- Provided adequate time for the supply chain to adjust to the final rules;
- Provided adequate time for public owners to educate their enforcement staff;
- Provided adequate time for public and private owners to consider the new requirements before putting together federal grant applications;
- Provided adequate time for contractors to bid on contracts with the new requirements to ensure those bids correctly incorporate the BABAA-applicable manufactured products and construction materials; and
- Established a functioning and adequate waiver process to address real world supply chain limitations and hard deadlines for any waiver.

## II. OMB's Current Path Has Already Created a Chaotic Patchwork of BABAA Implementation that Has Sown the Seeds of Confusion

As a result of OMB's actions, federal agencies across the government are taking varying approaches to implementing BABAA on applicable construction contracts, creating significant confusion across the construction industry as well as for state, local and private recipients of federal grants. For example:

- The U.S. Department of Housing and Urban Development proposed—but has not finalized—a six-month delay of all BABAA requirements and is undertaking a RFI process;<sup>1</sup>
- The U.S. Department of Transportation (USDOT) issued a six-month delay—to new contracts awarded on or after November 10—of the expanded BABAA requirements relating to construction materials *only*;<sup>2</sup>
- The U.S. Environmental Protection Agency has proposed a waiver of all BABAA requirements under the Water Infrastructure Finance and Innovation Act program that have initiated project design planning prior to May 14,<sup>3</sup> however the EPA has not yet proposed any similar waivers relating to the Clean Water and Safe Water State Revolving Loan Funds;
- The Federal Emergency Management Agency is implementing these requirements on applicable contracts awarded on or after May 14.<sup>4</sup> Even while the agency is implementing these requirements, it too announced on June 6, that it is requesting a six-month general applicability waiver for *all* BABAA requirements;<sup>5</sup>
- The U.S. Department of Education has not clarified the applicability of BABAA under the Elementary and Secondary School Emergency Relief Program on or after May 14, but it includes “aggregates such as concrete” as a “construction material” despite statute explicitly exempting “cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives;”<sup>6</sup> and
- Direct federal construction agencies—like the U.S. Army Corps of Engineers and General Services Administration—are reportedly not implementing BABAA requirements on new construction contracts until and when the Federal Acquisition Regulation (FAR) Council issues a final rule.

In addition, these requirements appear to attach to *American Rescue Plan Act's* Coronavirus State and Local Fiscal Recovery Fund dollars used on construction projects entered into on or after May 14. However, there is no guidance or update on this matter from the U.S. Department of Treasury. Many of these funds are reaching local government entities that have never or rarely utilized federal funds for construction projects, but are doing so under this program. As a result, they are not

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<sup>1</sup> [https://www.hud.gov/program\\_offices/general\\_counsel/BABA](https://www.hud.gov/program_offices/general_counsel/BABA)

<sup>2</sup> <https://www.federalregister.gov/documents/2022/05/25/2022-11195/temporary-waiver-of-buy-america-requirements-for-construction-materials>

<sup>3</sup> [https://www.epa.gov/system/files/documents/2022-05/WIFIA%20public%20interest%20waiver%20-%20design%20planning\\_May2022.pdf](https://www.epa.gov/system/files/documents/2022-05/WIFIA%20public%20interest%20waiver%20-%20design%20planning_May2022.pdf)

<sup>4</sup> <https://www.fema.gov/grants/policy-guidance/buy-america>

<sup>5</sup> <https://www.fema.gov/event/fema-seeking-public-comment-general-applicability-waiver-build-america-buy-america-act-babaa>

<sup>6</sup> [https://oese.ed.gov/files/2021/05/ESSER.GEER\\_FAQs\\_5.26.21\\_745AM\\_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf](https://oese.ed.gov/files/2021/05/ESSER.GEER_FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf) (FAQ A-20)

familiar with federal requirements—let alone ones still under implementation—and may be blindsided by the impacts these requirements will have on their projects.

Similarly, the following agencies or departments have not provided any updates regarding BABAA requirements as far as AGC is aware:

- The Department of Energy (includes information from the 2009 American Reinvestment and Recovery Act on Buy America/n, but nothing beyond that);<sup>7</sup>
- The Department of Agriculture, whose Rural Utility Service provides funding for building water and waste treatment, electric power and telecommunications/broadband projects; and whose Natural Resources Conservation Service provides funding for watershed rehabilitation projects; and
- The Department of Veterans Affairs.

This chaotic patchwork of BABAA implementation is stirring immense confusion among contractors, as well as federal, state and local agencies. And this confusion comes amid significant supply chain constraints caused by the COVID-19 pandemic, exacerbated by the war in Ukraine and inflation.

### **III. Examples of Existing Supply Chain Challenges**

AGC remains concerned that OMB's approach to BABAA implementation will add further ambiguity amid a time of immense uncertainty in the supply chain. To help articulate this point, AGC members have shared some of the supply chain constraints currently threatening the feasibility of infrastructure projects across the country.

The information our members have shared denote significant new surcharges on existing orders and future orders, pricing for materials being finalized at shipment—as opposed to initially ordered—or even upon delivery, and significant delivery delays from one year ago. For example:

- Received from an AGC member: “The current supply issues we are facing with extraordinary lead times are the cast iron epoxy coated, bronze and brass fittings for water mains. On projects that do not have the Buy America or American Made standards we are experiencing lead times of 6-9 months on hydrants depending on which brand is specified. On projects that DO have Buy America or American Made standards we are experiencing lead times of 11-14 months. The lead times of the individual fittings are anywhere from 6-12 weeks out depending on manufacturer. The manufacturers are not accepting new accounts currently . . . so we are at the mercy of the manufacturer the supplier has accounts already established with. All of these manufacturers are not honoring pricing and are reserving the right to sell the parts at the current market price on the day of shipment NOT the day the quote is provided even if we sign the quote and secure the order the day we receive it.”
- Received from an AGC member: “Below is one of our Aluminum Extruding Mill's lead times. Its showing 66-68 weeks, which is impossible for us to use. The lead time up until

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<sup>7</sup> [https://www.energy.gov/gc/action-center-office-general-counsel/faqs-related-recovery-act/buy-american#Can DOE suggest any practical ways](https://www.energy.gov/gc/action-center-office-general-counsel/faqs-related-recovery-act/buy-american#Can_DOE_suggest_any_practical_ways)

about a year ago was more like 6 weeks. We are a metal railing fabricator for roadway bridges, pedestrian bridges & railroad bridges.”

- Received from an AGC member: “Nucor Tubular just announced a \$200/ton increase effective immediately 5 minutes ago. Beams are probably going up tonight or tomorrow. Don’t know how much yet.”

In addition, AGC has enclosed several “Dear Customer” letters from suppliers and manufacturers detailing the surcharges, delays and other issues.

Again, AGC appreciates the opportunity to provide comments on this RFI.

Sincerely,

/S/

Jimmy Christianson  
Vice President, Government Relations

February 22, 2022

To Our Valued Customers: We have just received a notification from Sika on surcharge changes to its product line. Please see updates in red below. The following surcharges are now in effect (most recent updates in red):

Manufacturer	Current Surcharge
Carboline Company	4.20%
Five Star (Epoxies)	25%
Five Star (All products not otherwise specified)	6%
HB Fuller / Gunther	15%
Master Builders Solutions (Commercial Construction Systems)	
Adhesives - Urethane	40%
Air Barriers - Coatings	30%
Air Barriers - Liquid Flashings	25%
Concrete Repair - Acrylic	27%
Concrete Repair - Cementitious	16%
Concrete Repair - Epoxy / Urethane	30%
Concrete Strengthening	40%
Corrosion	25%
Cures & Surface Treatments - Hardeners	25%
Cures & Surface Treatments - Solvent Based	20%
Cures & Surface Treatments - Water & Exempt Solvent Based	16%
Deck Membranes - Epoxy	50%
Deck Membranes - Non-epoxy	25%
Grouts - Cementitious	16%
Grouts - Epoxy	35%
Joint Sealants - Hybrid & Other Technologies	25%
Joint Sealants - Urethane	30%
Wall Coatings	20%
Water Repellents	20%
Waterproofing - Cementitious	16%
Waterproofing - Urethane	30%
Master Builders Solutions (Wall Systems)	16%
Metzger-McGuire ( Polyurea Products)	15%
Metzger-McGuire ( Equipment/Components)	15%
Metzger-McGuire ( Epoxy Joint Filler/Repair Products: 10-Gallon units)	20%
Metzger-McGuire ( Epoxy Joint Filler MM-80: 1-Gallon units)	35%
Neogard (Through 2/28/22)	6%
Neogard (Effective 3/1/22)	0%
<b>Sika Commercial RS&amp;B</b>	
Epoxy Resins & Primers (Through 2/28/22)	35%
<b>Epoxy Resins &amp; Primers (Effective 3/1/22)</b>	<b>40%</b>
Silicone Sealants & Tapes (Through 2/28/22)	35%
<b>Silicone Sealants &amp; Tapes (Effective 3/1/22)</b>	<b>40%</b>
<b>2 Component Deck Membranes (Effective 3/1/22)</b>	<b>20%</b>
1-C & 2-C Polyurethane Sealants (Through 2/28/22)	20%
<b>1-C &amp; 2-C Polyurethane Sealants (Effective 3/1/22)</b>	<b>27%</b>
All Other Products (Through 2/28/22)	20%
<b>All Other Products (Effective 3/1/22)</b>	<b>25%</b>
Sika Flooring (Export)	10%
Sika LAM (RoofPro)	8%
Sto (Polymeric-based Products and all Basecoats)	5%
Surecrete	6%
Tremco - (Spectrem® 3 & 4)	10%
Tremco - (Spectrem® 1, 2, 800, 900SL; Tremsil® 400, 600; Proglaze® SSG, II; TREMStop® Fyr-Sil Gun Grade, Self-Leveling)	30%
Willseal	12%
WR Meadows (Perminator)	10%

If you have a specific project which you feel may be impacted contact your Coastal Sales Representative. We will alert the manufacturer immediately to review any potential price adjustments and follow up with you accordingly.

April 5, 2022

Dear Valued Customer,

As the year progresses the building products industry continues to face challenges related to constrained global supply chains, including ongoing inflationary pressures from raw materials and a tight labor market. Other input costs such as energy and freight have also continued to escalate, with transportation costs on both ocean-going vessels and domestic truck lines pressing higher. These inflation impacts show no sign of abating in the foreseeable future. Our team remains focused on delivering the best possible service to meet the requirements of the market.

Given the importance of continued investment in key strategic areas of our business to help drive our mutual success, and considering the challenges noted above, we are advising you of the following pricing changes effective on orders received on or after June 6, 2022:

**Flush & molded interior doors: +10%**

**Stile and rail doors produced in North America: +10%**

**Steel exterior doors and steel frames: +10%**

**Fiberglass exterior doors: +20%**

**Decorative & standard glass units: +15%**

In addition to the pricing outlined above, import containers from Chile will incur a 10% price increase on new orders effective immediately. Other import container orders for wood doors will continue to be priced on a per order basis.

All orders are subject to your current allocation amounts for interior and exterior doors, and we reserve the right to limit pre-buying in non-allocated products in the 8 weeks prior to the effective date of the price increase to a maximum of 105% of historical order averages.

We appreciate your business in this dynamic market. If you would like to discuss, please feel free to reach out to me or your local sales leader.

Thank you again for your business as we work to deliver  
Doors That Do More™!

TO: U.S. Valued Customers

We continue to see high volatility in the commercial roofing and building products industry. The price of crude oil, a critical raw material necessary to manufacture our products, has skyrocketed, and we are also seeing rising costs due to ongoing supply chain constraints, worker shortages, and higher freight/shipping charges. These prolonged disruptions and unpredictable market conditions are resulting in rising costs of doing business for suppliers and distributors across the globe. We are continually monitoring the market to provide the most accurate forecast possible.

With this in mind, Firestone Building Products will implement the following price increases effective on all orders shipping on or after April 25, 2022:

<b>Membrane</b>	
<b>Product</b>	<b>Increase</b>
TPO Self Adhered	Up to 40%
TPO XR (Fleece back)	Up to 30%
TPO Standard	6%
EPDM Self Adhered	13%
EPDM MAX (Re-Inforced)	7%
EPDM Standard	Up to 15%

<b>Accessories</b>	
<b>Product</b>	<b>Increase</b>
Accessories (Term Bars and Drain Bars)	Up to 35%

<b>Asphalt</b>	
<b>Product</b>	<b>Increase</b>
MB Base Sheets	37%
Glass Fiber Felt Sheets	75%
Channel Venting Base	37%

<b>Metal</b>	
<b>Product</b>	<b>Increase</b>
Metal (Aluminum)	7%
Metal Accessories	Up to 40%

<b>3rd Party Accessories</b>	
<b>Product</b>	<b>Increase</b>
DensDeck® and DensDeck® Prime	\$3.00/square
DensDeck® StormX™ Prime	\$3.00/square

<b>Freight</b>	
<b>Unit</b>	<b>New Price</b>
Per truckload	\$750

As a reminder, pricing will be firm 30 days prior to date of shipment. The only exceptions are as follows:

- Any announced vendor surcharges will be passed along with their market announcements
- Metal will be priced at time of shipment

To: Customers, Distributors and Stakeholders OF  
AMERICAN Ductile Iron Pipe, American SpiralWeld Pipe & American Flow Control

**Subject: Impacts of Global Supply Constrictions on Product Availability and Cost**

For several weeks now, the world has both observed and been affected by the conflict between Russia and Ukraine. The global economy has struggled to adjust to the impacts of the conflict, and the already stretched global supply chain has now been further limited due to constrictions on supply from those countries. As a result of this supply shortage, many of the raw materials necessary for the production of our products have already experienced critically lengthened lead times and extreme cost volatility. Additionally, costs to transport our products to market have been impacted by rising fuel prices, equipment shortages, and limited workforce. The unusual nature of this current economy has made it very difficult to predict how the flow of products to market and production costs will fluctuate.

Like many manufacturers who rely on raw materials which have been impacted by global shortages, AMERICAN has been forced to update our supply structure. Customers can expect further lengthening lead times and price volatility. For our ADIP/ASWP products, base pricing can be provided at bid time, and we will provide a bid-time volatility adder or escalator (as listed by various market indexes). Final, confirmed pricing will be provided at time of shipment. As for our AFC products, we have recently updated our pricing, but further pricing updates may be necessary as supply volatility continues to impact our ability to manufacture our products and get them to market. We will work to minimize the impacts of this market unpredictability, but we have no choice other than to adapt to these historic market circumstances. No longer can there be any long-term guarantees of price or availability.

As AMERICAN (and many other companies) adjusts to these new market realities, we recommend that you consider including provisions within your bid and contract process to allow for supply and cost volatility. This will reduce the unexpected impacts of supply extensions and cost increases. Our personnel are available to discuss strategies to minimize the impacts of this volatility.

While there is no perfect solution for these volatile market conditions, our new supply structure is intended to help our customers and partners to plan for and adapt to current and future market impacts. As always, we at AMERICAN appreciate your support, and we thank you for your business.

Sincerely,



To: AMERICAN Ductile Iron Pipe Customers and Distributors

Subject: **New DIP Pricing Structure: Effective April 1, 2022**

For several weeks now, the world has both observed and been affected by the conflict between Russia and Ukraine. The global economy has struggled to adjust to the impacts of the conflict, and the already stretched global supply chain has now been further limited due to constrictions on supply from those countries. As a result of this supply shortage, many of the raw materials necessary for the production of ductile iron pipe have already experienced critically lengthened lead times and extreme cost volatility. Additionally, costs to transport our products to market have been impacted by rising fuel prices. The unusual nature of this current economy has made it very difficult to predict how costs will fluctuate, so it has become necessary for us to implement a new pricing structure for our ductile iron pipe and other products.

Following are the necessary actions we must take in response to this rapid cost volatility:

Beginning April 1, 2022

- American will maintain a **base price** for our products. The current base price became effective on February 15, 2022 (see letter dated February 1, 2022).
- Additional cost volatility will be added to the base price and will be included in the quoted unit prices for our materials. Scrap volatility will be tracked for increases above and beyond the base scrap price in effect on February 15, 2022. This index can be monitored via Fastmarkets ([www.fastmarkets.com](http://www.fastmarkets.com)). Quoted prices will be either base price or base price plus a cost volatility adder.
- Quotes will be valid for 30 days
- Materials must be ordered within the 30-day quote validity period and those orders must ship within 30 days of order entry date.
- Materials which do not ship within the 30-day period will be subject to the applicable cost volatility adders at time of shipment. We recommend re-checking pricing within 30 days of shipment to confirm any cost adjustments. Additionally, we recommend tracking scrap cost changes via Fastmarkets.
- If further cost impacts become apparent, AMERICAN may need to increase our base prices. Should a base price increase become necessary, AMERICAN will issue a base price increase announcement. Any further cost volatility adders will still be applicable at that time.

To: Valued Distribution Partners and Customers  
Re: **Scrap Surcharge**

As you are aware, the Russia-Ukraine conflict has resulted in additional disruptions to an already stretched supply chain. This conflict has impacted multiple inputs to our manufacturing process, the biggest of which is our scrap metal costs. Given the current situation, demand for steel and iron to be supplied by other countries is quickly growing. Those manufacturers are looking to buy more scrap, the same scrap we buy for daily operations. As a result, scrap costs are rising very quickly. The restrictions on pig iron coming from Russia and Ukraine further exacerbates the demand for scrap.

Effective April 1, 2022, all product shipping from our facilities will incur a scrap surcharge to cover these increased scrap costs. While we hope this is a short-lived market condition, we have to prepare for the likely reality that this persists until the conflict has come to resolution, global sanctions on that region of the world are lifted, or some other market mechanism helps compensate for the increase in demand.

That surcharge will be based on the national increase in shredded scrap pricing as tracked by Fastmarkets (<https://www.fastmarkets.com>). The prior month average is released on the first business day of the month (i.e., the increase for March will be confirmed on April 1<sup>st</sup>). It will be communicated on the second of the month and made effective the fifth day of the month. The shredded scrap index is highly correlated to the busheling index which was up \$175/ton between February and March. Because of the even higher demand for busheling, we expect the shredded index to be up, but not more than busheling. Based on what we know as of this time, a good planning number should be between \$125-175/ton. All surcharges will be noted as a separate line item on your invoice.

As you know, our typical approach is to absorb increases and movements in raw materials pricing both small and large; however, the movement over the last two weeks is historically unprecedented. We believe a surcharge is the most effective mechanism for an adjustment because we intend for this to be temporary. When scrap pricing returns to February 2022 levels, we will pull back the surcharge. Should the conflict last longer and scrap prices remain higher for an extended period of time, we may consider converting the surcharge to a more permanent price increase, but it would be premature to determine that now.

Also note, we will continue to strictly enforce our terms and conditions. If you wish to cancel your order for Made to Stock (MTS) material in lieu of paying a surcharge, you may do so with no cancellation fees. Cancellation fees still apply to Made to Order (MTO) materials.

We regret having to take these actions; however, the metals markets have been greatly impacted by the situation abroad. We appreciate your support and patience while we all navigate these uncertain times.

The Russian-Ukraine conflict has caused a severe shortage of pig iron in the international market (as both countries are two of the world's top producers). While McWane Ductile does not use pig iron, consumers of pig iron have downcycled to raw materials such as busheling and auto shred, resulting in an immediate and intense demand for all grades of US scrap, which in turn has driven up scrap prices by \$150/ton and more this month alone. We expect this cost escalation to continue until the conflict resolves. In light of the detrimental impacts from these unexpected events, it is necessary to implement a \$150/ton scrap surcharge to all shipments effective 03/14/2022, which will be added as a separate line item on your invoice. Additional points:

- This surcharge is temporary, and we will rescind it when scrap prices return to February 2022 levels.
- We will adjust the surcharge monthly, based on changes in the Busheling Index published monthly in Fastmarkets.com.
- The surcharge we're announcing today will apply to all shipments from 3/14/2022 until 4/10/2022. Fastmarkets publishes the settled scrap price on the 10<sup>th</sup> of each month, therefore any April surcharge will apply to all shipments from 4/11/2022 to 5/10/2022.
- Because of unprecedented demand for our products along with supply chain constraints, we cannot guarantee lead times, delivery schedules, or availability.
- You may choose to not pay the surcharge and delay your scheduled shipments until such time as scrap prices have returned to lower levels. Once again, however, lead times, delivery schedule and availability are not guaranteed.