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Follow Up - October 25, 2023 Build America, Buy America (BABA) Act Training - Questions Addressed

1 message

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Good morning:

Thank you for attending the Build America, Buy America (BABA) Act training on October 25, 2023. Below were questions asked during the training that required additional research. Please review the responses below from Bill Fay, ADOT State Construction Engineer. Thank you.

1. If the project was a CMAR prior to 10/23/23, and prior to award of a RAISE Grant, would the BABA requirements still hold?

If the CMAR contract was signed prior to 10/23, then the new BABA requirements would not apply yet. If the design was contracted, yet the CMAR (construction phase) was not executed until after 10/23 then I think you would have to comply with BABA, including possibly needing to change order/contingency in specified materials that are BABA compliant. I think it wouldn't be a big deal to get the designer to adjust the specified materials ahead of time though.

2. Does the BABA Act apply for projects funded through FEMA?

Yes, however they have some of their own administrative rules (in addition to the OMB and FAR that apply to everyone) so seek agency specific guidance from them. ADOT's involvement is only with FHWA for CAs and FAA and FTA in a few other circumstances.

3. Equipment procurement may be under the De Minimis amount, but with installation (separate contract or staff installation) may cause the project value to exceed. Is it the full project cost or by contract?

The language in the circular says:

"The total amount of Federal financial assistance applied to the project..." I interpret this to be the full project but seek more detailed guidance from FHWA if needed.

4. How does a CMAR meet 2 CFR 200?

This question is outside the scope of BABA. However, every federal agency has accepted the legality of CMAR (though some choose not to use it). Different agencies have applied the need for a price or financial competition component differently with many concluding the ARS allowance for termination and negotiation with the next responsive firm being adequate. Seek guidance from your specific agency if you have questions.

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