

FY 2024 BABA TRIBAL CONSULTATION BUILD AMERICA, BUY AMERICA OVERVIEW

June 10 & 12, 2024

Presentation to Tribal Government Stakeholders
By U.S. DOI Departmental Offices and Bureaus



U.S. Department of the Interior | Office of Grants Management

FY 2024 DOI BABA TRIBAL CONSULTATION

Overview

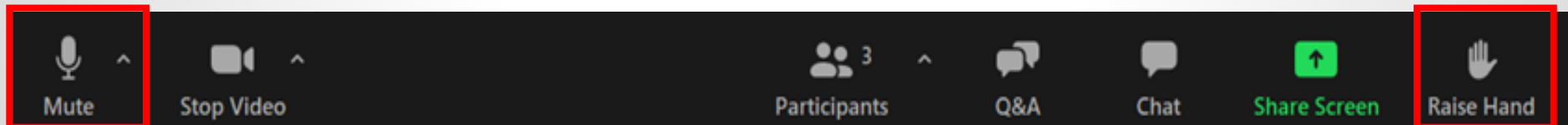
- ❑ **Purpose:** solicit Tribal input on any challenges and concerns about DOI financial assistance programs and BABA requirements during the open period of the DOI Tribal BABA waiver.
- ❑ **Outcomes:** DOI plans to utilize the information shared this week to assess the need for targeted BABA waivers in the future to address the diverse needs of Tribes.



FY 2024 DOI BABA TRIBAL CONSULTATION

Technical Guidance

- ❑ To enter the discussion, use the “raised hand” icon on the taskbar. If you are calling into the meeting using a phone, dial *9 on your keypad to raise your hand.
- ❑ Click the mute button in the bottom toolbar to mute yourself when not speaking. If you are calling into the meeting using a phone, dial *6 on your keypad to unmute yourself.
- ❑ Please direct any technical questions to **Sam Levy, Technical Support** using the “chat” function or email **support@kearnswest.com** for assistance.



Traditional Opening

Governor J. Michael Chavarria, Santa Clara Pueblo



FY 2024 DOI BABA TRIBAL CONSULTATION

Agenda

- U.S. Department of the Interior Welcome Remarks
- BABA Act Consultation Overview
 - BABA Act Legal Framework, Provision and Elements (*Note: *This presentation is offered for informational purposes only and does not constitute legal advice**)
 - BABA Waivers Types & Process
 - BABA Waivers Approved & in Effect
 - DOI Tribal Financial Assistance Infrastructure Programs
- Consultation Questions
- Consultation: Comments and Feedback



Participant Guidance

- ❑ This consultation session is primarily designed to gather your input to inform DOI's decision making
- ❑ Questions about the BABA Act will be reflected in the transcript and session summary but may not be answered by DOI's representatives during the meeting
- ❑ The facilitator may ask you to clarify or repeat at certain points to ensure that the court reporter's record is accurate

FY 2024 DOI BABA TRIBAL CONSULTATION

Participant Guidance (continued)

- When providing comments, we ask that you:
- Please allow elected or appointed tribal leaders commenting formally on behalf of their tribes to speak first
- Introduce yourself with your name, tribal affiliation, and role or position with your tribe
- Identify which of the six questions in the “Dear Tribal Leader” letter you are referencing to support PGM as they review comments



U.S. Department of the Interior: Welcome Remarks

- ❑ Cara Whitehead, Director, Office of Grants Management
- ❑ Assistant Secretary for Indian Affairs Bryan Newland (video)
- ❑ Principal Deputy Assistant Secretary-PMB, Joan Mooney (video)
- ❑ Scott A. de la Vega, Director, Bipartisan Infrastructure Law and Inflation Reduction Act Program Management Office



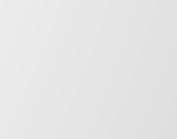
Opening Remarks

Cara Whitehead, Director, Office of Grants Management



Opening Remarks

Bryan Newland, Assistant Secretary for Indian Affairs



Opening Remarks

Joan Mooney, Principal Deputy Assistant Secretary-PMB



Opening Remarks

Scott A. de la Vega, Director, Bipartisan Infrastructure Law and Inflation Reduction Act Program Management Office



BABA Act Legal Framework, Provision and Elements



FY 2024 DOI BABA TRIBAL CONSULTATION

Build America, Buy America (BABA) Act

- ❑ Enacted within the *Infrastructure Investment and Jobs Act* (IIJA), P.L. 117-58, Sections 70911-70920 (2021)
- ❑ Extension of domestic content preference to all financial assistance for infrastructure, from agency-specific preferences
- ❑ Contrast with “Buy American” for agency procurements
- ❑ Only exemption is for disaster/emergency relief funding under Presidentially-declared Stafford Act major disaster or emergency



FY 2024 DOI BABA TRIBAL CONSULTATION

BABA Regulations and OMB Guidance

- ❑ Government-wide Regulations [2 C.F.R. Part 184](#) - *Buy America Preferences for Infrastructure Projects*
- ❑ OMB Guidance at [OMB Memorandum M-24-02](#) - *Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*
- ❑ See also, doi.gov/grants/BuyAmerica.gov



FY 2024 DOI BABA TRIBAL CONSULTATION

BABA Provision:

“Not later than [May 14, 2022], the head of each Federal agency shall ensure that 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.”

- Requirement attaches at two points of “**obligation**”: agency award and recipient contract execution (i.e., commitment to purchase project items)
 - Flows down through subawards and subrecipients
- Applies to any “*project*” for “*infrastructure*” funded by “*Federal financial assistance*”



FY 2024 DOI BABA TRIBAL CONSULTATION

“Federal Financial Assistance”

- ❑ Refers to 2 C.F.R. 200.1 definition (e.g., grants and cooperative agreements)
- ❑ DOI has not applied BABA to Indian Self-Determination and Education Assistance Act (ISDEAA) agreements, whether contracts, compacts or associated funding agreements



FY 2024 DOI BABA TRIBAL CONSULTATION

“Infrastructure”

- ❑ Includes, "at a minimum, the structures, facilities, and equipment for" a variety of identified examples, including:
 - Broadband infrastructure
 - Utilities
 - Electrical transmission facilities and systems
 - Water systems (drinking and wastewater)
 - Dams, ports, harbors and other maritime facilities
 - Public transportation
 - Roads, highways, bridges
- ❑ Need not be primary purpose of the project
- ❑ OMB suggests the following for agencies in making determinations:
 - “Permanently affixed” to a project (M-24-02)
 - “Public function” qualities of the project (2 C.F.R. 184.4(d))



FY 2024 DOI BABA TRIBAL CONSULTATION

“Project”

- “Construction, alteration, maintenance or repair of infrastructure in the United States”
- BABA requirement applies to the entire infrastructure project
 - Including Federal **and** non-federal funding used for the infrastructure project; and
 - Multiple awards funding the infrastructure project
- Each Federal agency is responsible for ensuring their funding complies with the law



FY 2024 DOI BABA TRIBAL CONSULTATION

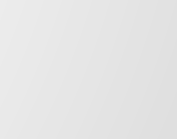
BABA Covered Materials:

- ❑ Iron or steel products
- ❑ Manufactured products
 - Domestic manufacturing + cost of domestic components greater than 55%
 - See 2 C.F.R. section 184.5, *Determining cost of components for manufactured products*
- ❑ Construction Materials
 - Law excludes: “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives”
 - See 2 C.F.R. section 184.6, *Construction material standards*
- ❑ See also, 2 C.F.R. section 184.3, *Definitions*



BABA Waivers - Types & Process

BABA Waivers Approved and in Effect



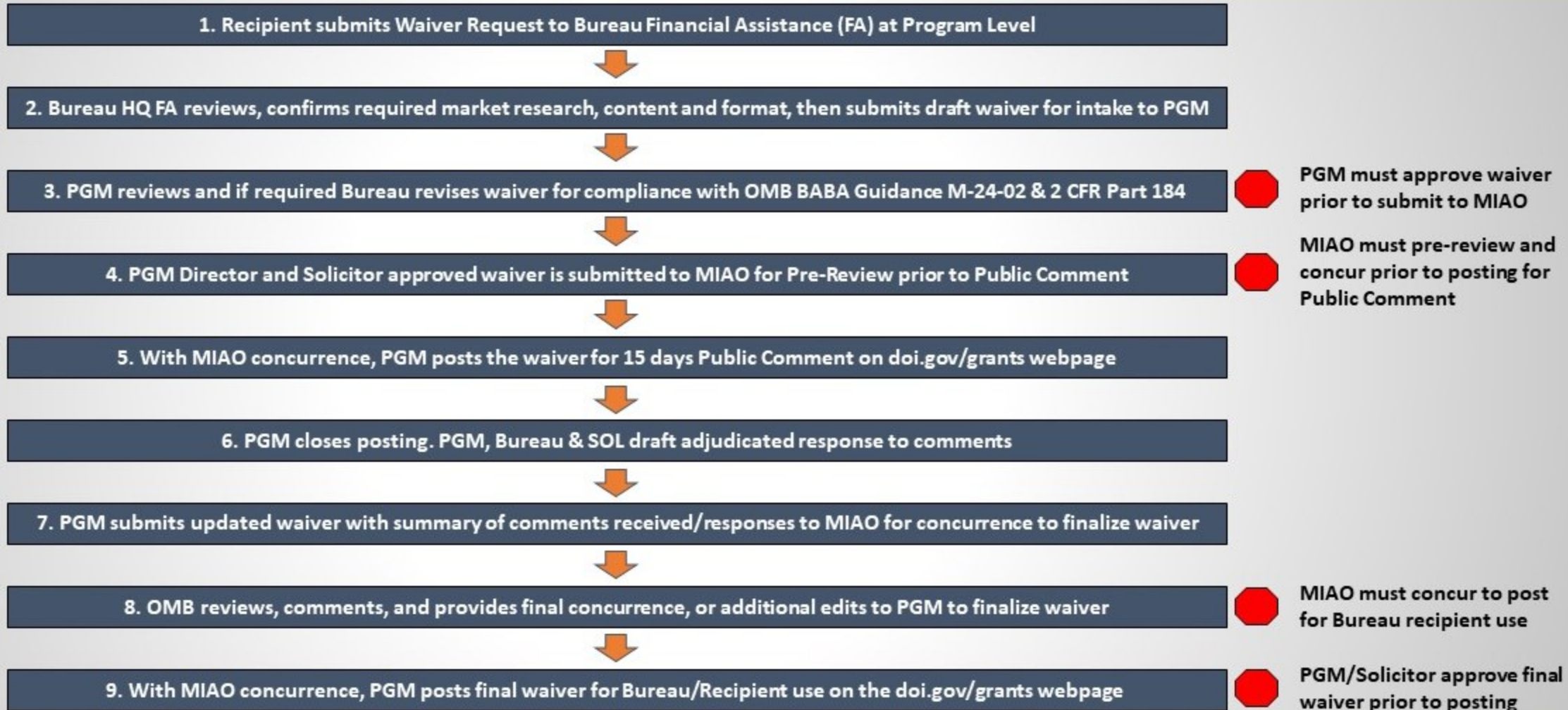
FY 2024 DOI BABA TRIBAL CONSULTATION

Types of BABA Waivers

- ❑ **Public Interest** – Applying BABA is inconsistent with public interest
 - Beginning in FY 2024, MIAO discourages Program Level/Public Interest waivers
- ❑ **Project Level Waiver** – Must be supported by Market Research that is independently verifiable. Two (2) types of waivers:
 - **Product Unavailability** - quality and quantity
 - **Unreasonable Cost** - 25% increase or more of project cost
- ❑ **General Applicability Waiver**
 - Applies to any waiver covering more than one (1) award
 - Extensive review(s) required from both EOP and MIAO



FY 2024 DOI BABA TRIBAL CONSULTATION



DOI BABA WAIVER PROCESS PER OMB M-24-02



FY 2024 DOI BABA TRIBAL CONSULTATION

Public Interest Waivers approved and in effect:

❑ Small Grants Waiver

- Waives BABA for Agreements when the total award is under \$250,000
- Expires February 20, 2028

❑ De Minimis Waiver

- Waives BABA for Infrastructure project purchases totaling up to 5% of project costs up to a maximum of \$1M
- Expires February 20, 2028



FY 2024 DOI BABA TRIBAL CONSULTATION

Public Interest Waivers approved and in effect: (continued)

❑ Tribal Consultation Waiver

- Waives BABA for Financial Assistance agreements issued to Federally recognized Indian tribes
- Expires September 1, 2024

❑ Pacific Islands and Territories Waiver

- Waives BABA for Financial Assistance agreements issued to U.S. Pacific Island territories, the Commonwealth of Northern Mariana, Guam and American Samoa
- Expires February 5, 2025



FY 2024 DOI BABA TRIBAL CONSULTATION

Public Interest Waivers approved and in effect: (continued)

- ❑ **U.S. Bureau of Reclamation (USBR) WaterSMART Program Waiver**
 - Waives BABA for all WaterSMART Program infrastructure projects
 - Expires February 14, 2025 for awards or amendments obligated on or after the effective date of the waiver; and February 14, 2026 for previously planned projects
- ❑ **USBR Rural Water Program Waiver**
 - Waives BABA for manufactured products for seven (7) Rural Water program project awards obligated or incrementally funded on or after the effective date of the waiver for a period of one year
 - Expires February 5, 2025



FY 2024 DOI BABA TRIBAL CONSULTATION

Product Unavailability Waivers approved and in effect:

- ❑ USBR Eastern New Mexico Rural Water System Heat Shrink Sleeves and Magnesium Anodes. Expires October 10, 2028
- ❑ USBR City of Rialto AMI Capable Water Meters. Expires December 31, 2025
- ❑ USBR Santa Clarita Valley Water Agency AMI Capable Water Meters. Expires July 30, 2025



FY 2024 DOI BABA TRIBAL CONSULTATION

DOI Tribal FA Programs subject to BABA:

- Approximately 137 Tribal Grant Recipients with Infrastructure Programs under the following Assistance Listings:

DOI Bureau	Assistance Listings	Program Title
Bureau of Indian Affairs and Bureau of Indian Education	15.608	Fish and Wildlife Management Assistance
Bureau of Reclamation	15.504	Title XVI Water Reclamation and Reuse Water Recycling and Desalination Construction Programs
	15.516	Fort Peck Reservation Rural Water System
	15.517	Fish and Wildlife Coordination Act
	15.519	Indian Tribal Water Resources Development, Management, and Protection
	15.525	Rocky Boy's/North Central Montana Regional Water System
	15.558	White Mountain Apache Tribe Rural Water System
	15.559	New Mexico Rio Grande Basin Pueblos Irrigation Infrastructure
Departmental Offices	15.018	Energy Community Revitalization Program
National Park Service	15.954	National Park Service Conservation, Protection, Outreach, and Education
Office of Surface Mining, Reclamation, and Enforcement	15.252	Abandoned Mine Land Reclamation (AMLR)
U.S. Fish and Wildlife Service	15.608	Fish and Wildlife Management Service



BABA Tribal Consultation Questions



FY 2024 DOI BABA TRIBAL CONSULTATION

BABA Tribal Consultation Questions:

- ❑ What are your concerns about BABA requirements on your Tribal infrastructure programs?
- ❑ How can DOI assist Tribes in implementing the BABA requirements?
- ❑ What barriers currently exist that may prevent your Tribe from being able to comply with BABA requirements?



FY 2024 DOI BABA TRIBAL CONSULTATION

BABA Tribal Consultation Questions (cont'd)

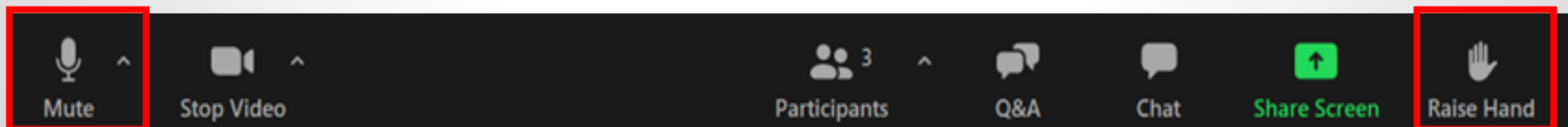
- ❑ What are your most important training and technical assistance needs relating to BABA?
- ❑ What Tribal concerns should DOI consider when developing and implementing BABA policy and waivers?
- ❑ What is the current/future capability of Tribal business manufacturing/selling of iron, steel, manufactured products/and or construction materials that could be used in infrastructure projects?



FY 2024 DOI BABA TRIBAL CONSULTATION

Technical Guidance

- ❑ To enter the discussion, use the “raised hand” icon on the taskbar. If you are calling into the meeting using a phone, dial *9 on your keypad to raise your hand.
- ❑ Click the mute button in the bottom toolbar to mute yourself when not speaking. If you are calling into the meeting using a phone, dial *6 on your keypad to unmute yourself.
- ❑ Please direct any technical questions to **Sam Levy, Technical Support** using the “chat” function or email **support@kearnswest.com** for assistance.



FY 2024 DOI BABA TRIBAL CONSULTATION

Following this Tribal Consultation, Tribal Government representatives and other stakeholders including financial assistance recipients are encouraged to submit additional comments to the Department of the Interior via this email address:

DOI_BABA_Tribal_Consultations@ios.doi.gov

Please submit your Comments by Monday, July 15, 2024, to be included for response in the reporting.



Closing Remarks

Cara Whitehead, Director, Office of Grants Management

