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UC Comments in Response to 88 FR 8374, "OMB Guidance for Grants and Agreements"

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March 13, 2023

Deidre A. Harrison
Acting Controller, Office of Federal Financial Management
Office of Management and Budget
725 Seventeenth Street NW.
Washington, DC 20503

RE: UC Comments in Response to [88 FR 8374](#), “OMB Guidance for Grants and Agreements”

Dear Ms. Harrison:

I write on behalf of the University of California (UC) system regarding the Request for Comment on OMB’s Proposed Rule on Guidance for Grants and Agreements issued on February 9, 2023. The changes relate to the Build America, Buy America (BABA) Act provisions of the Infrastructure Investment and Jobs Act.

The UC system – comprised of ten campuses, six academic health centers, and three affiliated U.S. Department of Energy national laboratories – stands at the forefront of cutting-edge research and technology development. As a system, UC receives approximately \$7 billion annually of extramural awards to support research conducted throughout all UC locations. Since Federal fiscal year 2017-18, UC received \$1.1 billion (an annual average of \$220 million) from Federal agencies specifically for infrastructure projects.

Comment on the proposed § 184.4

UC appreciates OMB’s efforts to implement the BABA preference to Federal financial assistance programs for infrastructure. In response to OMB’s request for public comment on *(10) Specific sections of proposed guidance* and *(11) Reducing burden on recipients*, UC is concerned by the omission of guidance on when the BABA requirements apply to Federal financial assistance programs that are not primarily infrastructure projects. Clarity on which “Buy America” rules or guidance apply will be critical for compliance. Misapplication of requirements increases compliance costs and stalls projects. **UC recommends that OMB specify, in accordance with [Memorandum M-22-11](#), when the BABA requirements apply to Federal financial assistance programs that are not primarily infrastructure projects. See below for proposed language.**

Memorandum M-22-11 defines infrastructure as “any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States, regardless of whether infrastructure is

the primary purpose of the project.” The broad definition causes overlaps between the BABA requirements and other “Buy America” regulations applicable to Federal awards for non-infrastructure projects. For example, the Buy American Act of the Trade Agreements Act and the Uniform Guidance’s “domestic preference” (2 CFR 200.322) already apply to many of UC’s Federal awards, and there is variance amongst these regulations.

We recognize it is not the goal of this Proposed Rule to reconcile all “Buy America” requirements applicable to all Federal awards. However, as stated in Memorandum M-22-11, “[m]aintaining current policies where appropriate avoids unnecessary disruption to programs, or elements of programs, that already meet or exceed Build America, Buy America requirements.” Transparency on which “Buy America” rules or guidance apply is advantageous to both Federal awarding agencies and contractors/grantees. Without this specificity, both groups will see an increase in negotiation and compliance costs, and delayed projects. UC proposes the following additional paragraph to capture the guidance included in M-22-11.

Proposed addition to § 184.4:

The Buy America Preference, as set forth in section 70914 of the Build America, Buy America Act, only applies to the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award. If a Federal awarding agency determines that no funds from a particular award under a covered program will be used for infrastructure, the Buy America Preference does not apply to that award. Similarly, for a covered program, the Buy America Preference does not apply to non-infrastructure spending under an award that also includes a covered project. The Buy America Preference applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds under one or more awards.

Thank you for the opportunity to comment. We look forward to continued engagement on this important issue. If you have any questions concerning these comments, please contact Ruchika Dhussa, Research Policy Manager, at Ruchika.Dhussa@ucop.edu.

Sincerely,



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