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|---|----|
| SPECIAL TERMS AND CONDITIONS FOR USE IN FORMULA GRANTS ISSUED UNDER THE GRID DEPLOYMENT OFFICE (GDO) ADMINISTRATIVE AND LEGAL REQUIREMENTS DOCUMENT (ALRD)..... | 6  |
| LEGAL AUTHORITY AND EFFECT (JUNE 2015) .....  | 6  |
| RESOLUTION OF CONFLICTING CONDITIONS .....  | 6  |
| AWARD AGREEMENT TERMS AND CONDITIONS (DECEMBER 2014) (NETL – MARCH 2023) .....  | 6  |
| FLOW DOWN REQUIREMENT .....   | 6  |
| CONFERENCE SPENDING (FEBRUARY 2015) .....   | 7  |
| PAYMENT PROCEDURES - REIMBURSEMENT THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM .....  | 7  |
| COST MATCH.....   | 7  |
| REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS.....   | 8  |
| USE OF PROGRAM INCOME - ADDITION .....  | 8  |
| POST-AWARD DUE DILIGENCE REVIEWS (MARCH 2023) .....   | 8  |
| ANNUAL ALLOCATION REQUEST.....  | 8  |
| RESILIENCE PROJECT AND SUBAWARD/SUBCONTRACT NOTIFICATION .....  | 9  |
| REPORTING.....  | 10 |
| FOREIGN NATIONAL PARTICIPATION – APPROVAL REQUIRED (MARCH 2023) .....   | 10 |
| STATEMENT OF FEDERAL STEWARDSHIP .....  | 11 |
| SITE VISITS .....   | 11 |
| CATEGORICAL EXCLUSION (CX) – Initial Application.....   | 11 |
| FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS .....  | 11 |
| ELIGIBLE ENTITY PRIORITIZATION – 40101(d)(5).....   | 11 |
| SMALL UTILITIES SET ASIDE – 40101(d)(6).....  | 12 |
| TECHNICAL ASSISTANCE AND ADMINISTRATIVE EXPENSES – 40101(d)(7) .....  | 12 |
| NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS .....  | 12 |
| INSURANCE COVERAGE (DECEMBER 2014) .....  | 12 |
| REAL PROPERTY – GRID RESILIENCE.....  | 12 |
| EQUIPMENT (DECEMBER 2014).....  | 12 |
| SUPPLIES (DECEMBER 2014).....   | 13 |
| CONTINUED USE OF REAL PROPERTY AND EQUIPMENT (OCTOBER 2022) .....   | 13 |
| PROPERTY TRUST RELATIONSHIP (DECEMBER 2014) .....   | 13 |
| INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP .....  | 14 |
| PERFORMANCE OF WORK IN UNITED STATES.....   | 14 |
| REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION .....  | 14 |
| SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS.....  | 17 |
| FINAL INCURRED COST AUDIT (DECEMBER 2014).....  | 18 |
| INDEMNITY.....  | 18 |
| LOBBYING RESTRICTIONS (MARCH 2012) .....  | 18 |
| CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES (MARCH 2014).....  | 18 |
| NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUNE 2015).....  | 19 |

|   |    |
|---|----|
| REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE<br>(DECEMBER 2015).....                   | 19 |
| EXPORT CONTROL (MARCH 2023).....  | 21 |
| PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES<br>OR EQUIPMENT (MARCH 2023) .....  | 21 |
| PROHIBITION RELATED TO FOREIGN GOVERNMENT-SPONSORED TALENT RECRUITMENT<br>PROGRAMS (MARCH 2023).....          | 22 |
| IMPLEMENTATION OF EXECUTIVE ORDER 13798, PROMOTING FREE SPEECH AND RELIGIOUS<br>LIBERTY (NOVEMBER 2020) ..... | 22 |
| INTERIM CONFLICT OF INTEREST REQUIREMENTS FOR FINANCIAL ASSISTANCE (MARCH<br>2023).....                       | 22 |
| FRAUD, WASTE AND ABUSE (MARCH 2023).....  | 23 |
| TRANSPARENCY OF FOREIGN CONNECTIONS (MARCH 2023).....   | 23 |
| FOREIGN COLLABORATION CONSIDERATIONS (MARCH 2023).....  | 24 |
| BUY AMERICAN REQUIREMENTS FOR INFRASTRUCTURE PROJECTS (MARCH 2023).....                                       | 24 |
| REPORTING, TRACKING AND SEGREGATION OF INCURRED COSTS (MARCH 2023) .....                                      | 27 |
| DAVIS-BACON REQUIREMENTS (MARCH 2023).....  | 27 |
| AFFIRMATIVE ACTION AND PAY TRANSPARENCY REQUIREMENTS (MARCH 2023).....  | 29 |
| POTENTIALLY DUPLICATIVE FUNDING NOTICE (MARCH 2023).....  | 29 |

**SPECIAL TERMS AND CONDITIONS FOR USE IN FORMULA GRANTS ISSUED UNDER THE  
GRID DEPLOYMENT OFFICE (GDO) ADMINISTRATIVE AND LEGAL REQUIREMENTS DOCUMENT  
(ALRD)**

**LEGAL AUTHORITY AND EFFECT (JUNE 2015)**

- (a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.
- (b) Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

**RESOLUTION OF CONFLICTING CONDITIONS**

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

**AWARD AGREEMENT TERMS AND CONDITIONS (DECEMBER 2014) (NETL – MARCH 2023)**

This award/agreement consists of the Assistance Agreement cover page, plus the following:

- a. Special terms and conditions.  
b. Attachments:

| Attachment<br>No. | Title                                  |
|-------------------|--|
| 1                 | Intellectual Property Provisions       |
| 2                 | Statement of Project Objectives        |
| 3                 | Federal Assistance Reporting Checklist |

- c. Applicable program regulations: NONE
- d. DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at <http://www.eCFR.gov>.
- e. Research Terms and Conditions and the DOE Agency Specific Requirements at <http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp> (if the Award is for research and the Award is to a university or non-profit).
- f. Application/proposal as approved by DOE.
- g. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at <https://www.nsf.gov/awards/managing/rtc.jsp>.
- h. Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL)

**FLOW DOWN REQUIREMENT**

The Recipient agrees to apply the terms and conditions of this Award, as applicable, including the Intellectual Property Provisions, to all subrecipients (and subcontractors, as appropriate), as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all subrecipients (and subcontractors, as appropriate), and to require their strict compliance therewith.

**CONFERENCE SPENDING (FEBRUARY 2015)**

The recipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant or cooperative agreement was awarded that would defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed \$20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

**PAYMENT PROCEDURES - REIMBURSEMENT THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM**

- a. Method of Payment. Payment will be made by reimbursement through the Department of Treasury's ASAP system.
- b. Requesting Reimbursement. Requests for reimbursements must be made through the ASAP system. Your requests for reimbursement should coincide with your normal billing pattern, but not more frequently than every two weeks. Each request must be limited to the amount of disbursements made for the federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.
- c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to, and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.
- d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

**COST MATCH**

- a. "Cost Matching" for the non-federal share is calculated as a percentage of the Federal funds only, rather than the Total Project Cost. The Total Project Cost is the sum of the Government share and Recipient match. The Recipient's cost match must come from non-Federal sources unless otherwise allowed by law.

Each Recipient is required to match 15 percent of their allocation. In addition, eligible entities performing resilience projects are required to provide a 100 percent cost match, unless the eligible entity sells not more than 4,000,000 megawatt hours of electricity per year, then the eligible entity is required to provide a one-third cost match.

By accepting federal funds under this award, the Recipient is liable for the cost match percentage of total expenditures incurred, even if the project is terminated early or is not funded to its completion.

- b. If the Recipient discovers that you may be unable to provide the required cost matching under this award, the Recipient should immediately provide written notification to the DOE Award Administrator indicating whether the Recipient will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost matching will be secured.
- c. The Recipient must maintain records of all project costs that you claim as cost match, including in-kind costs, as well as records of costs to be paid by DOE/NNSA. Such records are subject to audit.
- d. Failure to provide the cost matching required by this term may result in the subsequent recovery by DOE of some or all the funds provided under the award.

## **REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS**

- a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct, and indirect), is less than the total costs reimbursed, you must refund the difference.
- b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the under recovery. Such under recovery may be allocated as part of the organization's required cost sharing.

## **USE OF PROGRAM INCOME - ADDITION**

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

## **POST-AWARD DUE DILIGENCE REVIEWS (MARCH 2023)**

During the life of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

## **ANNUAL ALLOCATION REQUEST**

The Recipient shall submit their annual allocation request in accordance with the instructions provided in the Reporting Requirements Checklist attached to this award. The Annual Allocation Request must be submitted to the DOE Program Manager whose name is in Block 15 of the Award Agreement and the DOE Award Administrator whose name is identified on Page 2 of the Assistance Agreement cover page.

The Annual Allocation Request must include the following information:

- SF 424 reflecting the current year allocation and cost match amounts.
- Cost Match Information for current year allocation.
  - Cost Match Value
  - Identify the source/organization of the proposed cost match.
  - Type of Cost Match (cash or in-kind)
  - Provide a description of their proposed cost match.
- Program Narrative – copy of current Program Narrative if there are no changes or an updated Program Narrative to reflect any changes. If changes have occurred, a Public Notice and Hearing must be documented in the updated Program Narrative.

## **RESILIENCE PROJECT AND SUBAWARD/SUBCONTRACT NOTIFICATION**

**For all resilience project subawards** and any other subaward over \$250,000, the Recipient must notify the DOE Contracting Officer and Project Officer in writing prior to the execution of new or modified subawards/subcontracts. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR 200, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

The Recipient is responsible for making a final determination to award or modify subawards/subcontracts under this agreement, but the Recipient may not proceed with the subaward/subcontract until the DOE determines, and provides the Recipient written notification, that the information provided is adequate.

In order to satisfy this notification requirement, Recipient documentation must, at a minimum, include the following:

- (a) Recipient confirms that the sub awardee:
- (i) is an eligible entity type identified in BIL section 40101(a)(2);
  - (ii) is a domestic entity; to qualify as a domestic entity, the entity must be organized, chartered, or incorporated (or otherwise formed) under the laws of a particular state or territory of the United States; have majority domestic ownership and control; and have a physical place of business in the United States;
  - (iii) is not a debarred or a suspended entity; and
  - (iv) will pay all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 on projects funded directly by or assisted in whole or in part by and through funding under the award, wages at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 1 of Title 40, United State Code commonly referred to as the “Davis-Bacon Act” (DBA).
- (b) Recipient confirms that:
- (i) the process undertaken to solicit the subaward/subcontract complies with their written procurement procedures as outlined in 2 CFR 200.318;
  - (ii) the proposed work to be done is an eligible activity identified in BIL Section 40101(e)(1);
  - (iii) the proposed subaward effort is consistent with the Program Narrative being executed under the award;
  - (iv) the primary purpose of the proposed project is not cyber security but that the implementation of the proposed project will adhere to any applicable cybersecurity requirements, and where possible, best practices in deploying technologies under their subaward;
  - (v) no planned, actual, or apparent conflict of interest exists between the Recipient and the selected sub awardee/subcontractor and that the Recipient’s written standards of conduct were followed;
  - (vi) as applicable, subaward/subcontracts address the Small Utilities Set Aside requirement set forth in BIL Section 40101(d)(6); and
  - (vii) all required award provisions will be flowed down in the resulting subaward/subcontract.
- (c) Recipient provides:
- (i) SF-424A Budget Information form and Budget Justification form for all resilience project subawards; and any other subaward over \$250,000;
  - (ii) a completed Environmental Questionnaire covering the subaward activity;
  - (iii) cost match commitment letter from the eligible entity committing to meet the cost matching as required in BIL Section 40101(h);
  - (iv) the proposed metrics that will be collected and reported in the Quarterly Progress Report to measure and demonstrate the beneficial impact of the resilience project on the resilience of the grid and to the community served;
  - (v) listing of Foreign Nationals for subrecipients/eligible entities and technical assistance contractors in accordance with the Foreign National Participation – Approval term;
  - (vi) Performance of Work in the United States waiver (if applicable);
  - (vii) Buy America for Infrastructure Projects waiver (if applicable);
  - (viii) Domestic entity waiver for subrecipients (if applicable); and
  - (ix) a summary/brief description of any application, similar in nature, submitted by the proposed sub awardee to the DOE under BIL Section 40101(c), DE-FOA-0002740, Grid Resilience and Innovation Partnerships (GRIP).

If a State or Indian Tribe petitions the Secretary to be designated as an eligible entity for the purpose of executing a resilience project, it must provide both the 15% cost match for the entire allocation made by DOE to the State or Tribe (see BIL section 40101(d)(8)) and the project specific cost match requirement of 100% or 1/3 (see BIL section 40101(h)).

## **REPORTING**

Reporting requirements are identified on the Federal Assistance Reporting Checklist and Instructions, DOE F 4600.2, attached to the award agreement. Additional reporting requirements apply to projects funded by BIL. As part of tracking progress toward key Departmental goals – ensuring justice and equity, creating jobs, boosting domestic manufacturing, reducing greenhouse gas emissions, and advancing a pathway to private sector – DOE may require specific data collection. Examples of data that may be collected include:

- project locations,
- measurable improvements of resilience,
- transmission capacity upgraded, expanded, or built,
- electricity storage capacity installed,
- funding leveraged,
- stakeholders engaged,
- technical assistance provided, and
- value of contracts or agreements with minority owned business for supplies, services, or equipment.

Recipients must maintain sufficient records to substantiate this information upon request.

## **FOREIGN NATIONAL PARTICIPATION – APPROVAL REQUIRED (MARCH 2023)**

If the Recipient (including any of its subrecipients and contractors) anticipates involving foreign nationals in the performance of this award, the Recipient must provide DOE with specific information about each foreign national to ensure compliance with the requirements for foreign national participation and access approvals. The volume and type of information required may depend on various factors associated with the award.

Approval for foreign nationals in Principal Investigator/Co-Principal Investigator roles, from countries of risk (i.e., China, Iran, North Korea, and Russia), and from countries identified on the U.S. Department of State’s list of State Sponsors of Terrorism (<https://www.state.gov/state-sponsors-of-terrorism/>) must be obtained from DOE before they can participate in the performance of any work under this award.

A “foreign national” is defined as any person who is not a United States citizen by birth or naturalization. DOE may elect to deny a foreign national’s participation in the award. Likewise, DOE may elect to deny a foreign national’s access to a DOE sites, information, technologies, equipment, programs, or personnel.

**The Recipient must include this term in any subaward and in any applicable contractual agreement(s) associated with this award.**

## **STATEMENT OF FEDERAL STEWARDSHIP**

DOE/NNSA will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

## **SITE VISITS**

DOE/NNSA's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

## **CATEGORICAL EXCLUSION (CX) – Initial Application**

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of federal funds. Based on the initial information provided by the Recipient, DOE has made a NEPA determination by issuing a CX, thereby **authorizing use of funds for technical assistance and administrative project activities only**.

NEPA review and approval of proposed resilience project activities are required as per the Resilience Project and Subaward/Subcontract Notification Term. If any of the proposed projects are likely to require an Environmental Assessment (EA) or Environmental Impact Statement (EIS), the DOE NEPA Compliance Officer will provide further guidance. Should the recipient elect to undertake activities prior to authorization from the DOE, the Recipient is doing so at risk and such costs may not be authorized and recognized as allowable cost.

## **FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

## **ELIGIBLE ENTITY PRIORITIZATION – 40101(d)(5)**

In making subawards to eligible entities using funds made available under the program, the Recipient shall give priority to projects that, in the determination of the Recipient, will generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events.

## **SMALL UTILITIES SET ASIDE – 40101(d)(6)**

The Recipient shall ensure that, of the amounts made available to eligible entities, the percentage made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year is not less than the percentage of all customers in the Recipient State or Indian Tribe (as applicable) that are served by those eligible entities.

## **TECHNICAL ASSISTANCE AND ADMINISTRATIVE EXPENSES – 40101(d)(7)**

Of the amounts made available to the Recipient under the program each fiscal year, the Recipient may use not more than 5 percent for technical assistance (*see* BIL Section 40101(g)(1)(A)) and administrative expenses associated with the program.

## **NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American made.



**INSURANCE COVERAGE (DECEMBER 2014)**

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds.

**REAL PROPERTY – GRID RESILIENCE**

Acquisition of land or easements is not permitted under this grant program. Improvements to real property for the purpose of grid hardening or resilience is not considered acquisition of real property for the purpose of this grant program, and therefore may be permitted.

**EQUIPMENT (DECEMBER 2014)**

Subject to the conditions provided in 2 CFR Part 200.313, title to equipment (property) acquired under a Federal award will vest conditionally with the non-Federal entity.

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR Part 200.313 before disposing of the property.

States must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by the Federal awarding agency in the priority order specified in 2 CFR Part 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR Part 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity.

Disposition will be made as follows: (a) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency; (b) Non-Federal entity may retain title or sell the equipment after compensating the Federal awarding agency as described in 2 CFR Part 200.313(e)(2); or (c) transfer title to the Federal awarding agency or to an eligible third Party as specified in CFR Part 200.313(e)(3).

See 2 CFR Part 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR Part 200.439 Equipment and other capital expenditures.

See 2 CFR Part 910.360 for amended requirements for Equipment for For-Profit recipients.

**SUPPLIES (DECEMBER 2014)**

See 2 CFR Part 200.314 for requirements pertaining to supplies acquired under a Federal award.

See also § 200.453 Materials and supplies costs, including costs of computing devices.

**CONTINUED USE OF REAL PROPERTY AND EQUIPMENT (OCTOBER 2022)**

Real property and equipment purchased with project funds (federal share and recipient cost share) under this Award are subject to the requirements at 2 CFR 200.311, 200.313, and 200.316 (non-Federal entities, except for-profit entities) and 2 CFR 910.360 (for-profit entities). The Recipient may continue to use the real property and equipment after the conclusion of the award period of performance so long as the Recipient:

- a. Continues to use the property for the authorized project purposes;
- b. Complies with the applicable reporting requirements and regulatory property standards;
- c. As applicable to for-profit entities, UCC filing statements are maintained; and
- d. Submits a written Request for Continued Use for DOE authorization, which is approved by the DOE Contracting Officer.

The Recipient must request authorization from the Contracting Officer to continue to use the property for the authorized project purposes beyond the award period of performance (“Request for Continued Use”). The Recipient’s written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period (e.g., perpetuity, until fully depreciated, or a calendar date where the Recipient expects to submit disposition instructions); acknowledgement that the recipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.

When the property is no longer needed for authorized project purposes, the Recipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310-200.316.

#### **PROPERTY TRUST RELATIONSHIP (DECEMBER 2014)**

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

See 2 CFR Part 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

#### **INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP**

**The Recipient must include the insolvency, bankruptcy, or receivership term in any for-profit/non-profit sub-award(s), at any tier.**

- a. You shall immediately notify the DOE of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.
- b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.
- c. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines

that there are significant deficiencies or concerns with your performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.

d. Failure of the Recipient to comply with this term may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

## **PERFORMANCE OF WORK IN UNITED STATES**

The Recipient agrees that at least **100%** of the direct labor cost for the project (including subrecipient labor) shall be incurred in the United States, unless the Recipient can demonstrate to the satisfaction of the DOE that the United States economic interest will be better served through a greater percentage of the work being performed outside the United States.

## **REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION**

a. Reporting of first tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$30,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if

i. the total Federal funding authorized to date under this award is \$30,000 or more;

ii. in the preceding fiscal year, you received;

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <http://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if;

- i. in the subrecipient's preceding fiscal year, the subrecipient received;

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards,
- and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;

- ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization;
  - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_.210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
- i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax-qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites, or property) for the executive exceeds \$10,000.

#### **SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS**

A. Requirement for System for Award Management (SAM) Unless exempted from this requirement under 2 CFR 25.110, the prime recipient must remain registered and maintain current information in SAM for the entire period of performance

of the award. This includes providing information on the prime recipient's immediate and highest-level owner and subsidiaries, as well as on all of its predecessors that have been awarded a Federal contract or Federal financial assistance agreements within the last three years, if applicable, until the prime recipient submits the final financial report required under this award or receives the final payment, whichever is later. This requires the prime recipient to review its information in SAM at least annually after the initial registration, and to update its information as soon as there are changes. Reviews and updates may be required more frequently due to changes in recipient information or as required by another award term.

#### B. Requirement for Unique Entity Identifier

If authorized to make subawards under this award, the prime recipient:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward until the entity has provided its unique entity identifier to the prime recipient.

2. Must not make a subaward to an entity unless the entity has provided its unique entity identifier to the prime recipient. Subrecipients are not required to obtain an active SAM registration but must obtain a unique entity identifier.

#### C. Definitions

For purposes of this term:

1. System for Award Management (SAM) means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at <https://www.sam.gov>).

2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

3. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following for purposes of this part:

- a. A foreign organization;
- b. A foreign public entity;
- c. A domestic for-profit organization; and
- d. A Federal agency.

4. Subaward has the meaning given in 2 CFR 200.1.

5. Subrecipient has the meaning given in 2 CFR 200.1.

#### **FINAL INCURRED COST AUDIT (DECEMBER 2014)**

In accordance with 2 CFR Part 200 as amended by 2 CFR Part 910, DOE reserves the right to initiate a final incurred cost audit on this award. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

#### **INDEMNITY**

The Recipient must include the following indemnity provision in any sub-awards to eligible entities performing the resilience projects at any tier:

The Michigan Department of Environment, Great lakes, and Energy shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

#### **LOBBYING RESTRICTIONS (MARCH 2012)**

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

#### **CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES (MARCH 2014)**

By entering into this agreement, the undersigned attests that Michigan Department of Environment, Great Lakes, and Energy has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

The undersigned further attests that Michigan Department of Environment, Great Lakes, and Energy does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

For purposes of these assurances, the following definitions apply:

A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.

#### **NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUNE 2015)**

(1) By entering into this agreement, the undersigned attests that Michigan Department of Environment, Great Lakes, and Energy does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The undersigned further attests that does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

a. "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

b. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

c. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

## **REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (DECEMBER 2015)**

### a. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

### b. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

2. Reached its final disposition during the most recent five-year period; and

3. Is one of the following:

(A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(C) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(D) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;



(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

#### c. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

#### d. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

#### e. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or A. Reporting of Matters Related to Recipient Integrity and Performance.
2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - (A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - (B) The value of all expected funding increments under a Federal award and options, even if not yet

#### **EXPORT CONTROL (MARCH 2023)**

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as “Export Controls.” The Recipient is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under the award, including subrecipient work.

The Recipient must immediately report to DOE any export control violations related to the project funded under this award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (MARCH 2023)**

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (Federal and non-Federal funds) to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See Public Law 115-232, section 889 for additional information.

## **PROHIBITION RELATED TO FOREIGN GOVERNMENT-SPONSORED TALENT RECRUITMENT PROGRAMS (MARCH 2023)**

### **A. Prohibition**

Persons participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk* are prohibited from participating in this Award. The Recipient must exercise ongoing due diligence to reasonably ensure that no individuals participating on the DOE-funded project are participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the Recipient must notify DOE within five (5) business days upon learning that an owner of the Recipient or subrecipient or individual on the project team is or is believed to be participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. DOE may modify and add requirements related to this prohibition to the extent required by law.

### **B. Definitions**

1. **Foreign Government-Sponsored Talent Recruitment Program.** An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.
2. **Foreign Country of Risk.** DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

### **IMPLEMENTATION OF EXECUTIVE ORDER 13798, PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY (NOVEMBER 2020)**

States, local governments, or other public entities may not condition sub-awards in a manner that would discriminate, or disadvantage sub-recipients based on their religious character.

### **INTERIM CONFLICT OF INTEREST REQUIREMENTS FOR FINANCIAL ASSISTANCE (MARCH 2023)**

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term “Investigator” means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities, with the exception of DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (FCOI), i.e., managed, and unmanaged/ unmanageable, in its initial and ongoing FCOI reports.

Prior to award, the Recipient was required to: 1) ensure all Investigators on this Award completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed, and unmanaged/unmanageable). Within 180 days of the date of the Award, the Recipient must be in full compliance with the other requirements set forth in DOE’s interim COI Policy.

### **FRAUD, WASTE AND ABUSE (MARCH 2023)**

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE’s programs and operations including deterring and detecting fraud, waste, abuse, and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to

include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

Additionally, the Recipient must be cognizant of the requirements of 2 CFR § 200.113 Mandatory disclosures, which states:

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

### **TRANSPARENCY OF FOREIGN CONNECTIONS (MARCH 2023)**

During the term of the Award, the Recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the Recipient or subrecipients:

1. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the Recipient or subrecipients that increases foreign ownership related to a country of risk;
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Recipient or subrecipient.

### **FOREIGN COLLABORATION CONSIDERATIONS (MARCH 2023)**

- A. Consideration of new collaborations with foreign organizations and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations, or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- B. Existing collaborations with foreign entities, organizations, and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.
- C. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space,

data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences, use of the Recipient’s services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Recipient’s standard policies and procedures.

## BUY AMERICAN REQUIREMENTS FOR INFRASTRUCTURE PROJECTS (MARCH 2023)

### A. Definitions

**Components** are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

**Construction Materials** are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

**Domestic Content Procurement Preference Requirement-** means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

- (A) all iron and steel used in the project are produced in the United States;
- (B) the manufactured products used in the project are produced in the United States; or
- (C) the construction materials used in the project are produced in the United States.

Also referred to as the Buy America Requirement.

**Infrastructure** includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy -including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

**Manufactured Products** are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

**Primarily of iron or steel** means greater than 50% iron or steel, measured by cost.

**Project-** means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**Public-** The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

**B. Buy America Requirement**

None of the funds provided under this award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the sub awardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

**C. Certification of Compliance**

The Recipient must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.

The Recipient must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all sub awardees, contractors, and vendors to the Recipient. The Recipient must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

**D. Waivers**

When necessary, the Recipient may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer.

Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability- The 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; or
3. Unreasonable Cost- 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.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The Recipient should consider using the following principles as minimum requirements contained in their waiver request:

- Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
- Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.

- Conditional: The Recipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.

DOE may request, and the Recipient must provide, additional information for consideration of this waiver. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

### **REPORTING, TRACKING AND SEGREGATION OF INCURRED COSTS (MARCH 2023)**

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

### **DAVIS-BACON REQUIREMENTS (MARCH 2023)**

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2000 on projects funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Recipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
- (2) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- (5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.



(6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

(7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

The Department of Energy has contracted with, a third-party DBA electronic payroll compliance software application. The Recipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software.

#### **Davis Bacon Act Electronic Certified Payroll Submission Waiver**

A waiver must be granted before the award starts. The applicant does not have the right to appeal DOE's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

#### **AFFIRMATIVE ACTION AND PAY TRANSPARENCY REQUIREMENTS (MARCH 2023)**

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

- (1) Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients and Contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.

(3) Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide<sup>1</sup> should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

For construction projects valued at \$35 million or more and lasting more than one year, Recipients, contractors, or subcontractors may be selected by OFCCP as a mega construction project. If selected, DOE, under relevant legal authorities including Sections 205 and 303(a) of Executive Order 11246, will require participation as a condition of the award. This program offers extensive compliance assistance with EO 11246. For more information regarding this program, see <https://www.dol.gov/agencies/ofccp/construction/mega-program>.

#### **POTENTIALLY DUPLICATIVE FUNDING NOTICE (MARCH 2023)**

If the Recipient or subrecipients have or receive any other award of federal funds for activities that potentially overlap with the activities funded under this Award, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Award. If there are identical cost items, the Recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

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<sup>1</sup> See OFCCP's Technical Assistance Guide at:

<https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec>  
Also see the National Policy Assurances <http://www.nsf.gov/awards/managing/rtc.jsp>.