

U.S. DEPARTMENT OF
ENERGY



Office of
ENERGY EFFICIENCY &
RENEWABLE ENERGY

Everything you Wanted to Know About Federal Regulations But Were Afraid to Ask

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Hierarchy of Federal Rules

- **Laws (Statutes, Acts, etc.):**
 - EPAAct 2005, EISA 2007, NEPA, ARRA
- **Regulations (Code of Federal Regulations or CFR):**
 - 2 CFR 200, 2 CFR 910, 10 CFR 600, 10 CFR 420 (SEP)
- **Policy**
 - DOE, EERE, GFO (e.g. Award Terms & Conditions)

Where Do I Find the Regulations for My Award?

Electronic Code of Federal Regulations or e-CFR

e-CFR

- Structure of CFR: Title → Chapter → Subchapter → Part → Subpart → Subsection (§)
- Note: When searching e-CFR, keep clicking on the subheadings of the section in question until all text appears in chronological sequence in a blue 8 point font.
- Then, hit the “F3” key and perform a word search for the particular section of interest (e.g. prior approval, audit, payment, state matching contribution, etc.)

Award Terms & Conditions

SPECIAL TERMS AND CONDITIONS

The Grantee (“Recipient”), which is identified in Block 5 of the Assistance Agreement, and the Office of Energy Efficiency and Renewable Energy (“EERE”), an office within the United States Department of Energy (“DOE”), enter into this Award, referenced above, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 1 to this Award.

This Award consists of the following documents, including all terms and conditions therein:

	Assistance Agreement
	Special Terms and Conditions
Attachment 1	Annual File
Attachment 2	Federal Assistance Reporting Checklist and Instructions
Attachment 3	Budget Information SF-424A
Attachment 4	Intellectual Property Provisions
Attachment 5	Master File
Attachment 6	NEPA Determination
Appendix A	Appendix A

The following are incorporated into this Award by reference:

- a) Applicable program regulations, including 10 CFR Part 420 – State Energy Program at <http://eCFR.gov>.
- b) DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at <http://www.eCFR.gov>.
- c) National Policy Assurances to be incorporated as Award Terms in effect on date of award at <http://www.nsf.gov/awards/managing/rtc.jsp>.CJ1
- d) The Recipient’s application/proposal as approved by EERE.

Slide 4

CJ1

update to SAM

Cash, James, 6/11/2019

Award Terms & Conditions

- **General Provisions**

- Flow Down Requirement
- Electronic Authorization of Award Documents (FedConnect)
- Reporting Requirements (Federal Assistance Reporting Checklist)
- Audits (Single Audit)

- **Financial Provisions**

- Cost Matching
- Payment Procedures (ASAP; ASAP Approval Required)
- Rebudgeting in excess of 10 Percent

- **Miscellaneous Provisions**

- System for Award Management (SAM) and Universal Identifier Requirements (DUNS) [name / location changes]

SAM & DUNS

Term 37.

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity 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. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

FedConnect

Term 3.

ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by DOE, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of this Award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature. Further, pursuant to 2 CFR §910.127(b) or 10 CFR §600.16 Legal authority and effect, should the Recipient request to draw down Federal funds prior to acknowledging the award documents, the request to draw down funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

Register in FedConnect at <https://www.fedconnect.net>. To create an organization account, your organization's SAM MPIN is required. For more information about the SAM MPIN or other registration requirements, review the FedConnect Ready, Set, Go! Guide at http://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf.

Federal Assistance Reporting Checklist (FARC)

U.S. DEPARTMENT OF ENERGY Energy Efficiency & Renewable Energy		Attachment #2
EERE 355: Federal Assistance Reporting Checklist (FARC)		
1. Identification Number: DE-EE0006979.0002		2. Program/Project Title: SEP Formula- State of Arkansas
3. Recipient: State of Arkansas		
4. Reporting Requirements (see attached "EERE Reporting Instructions"):	Frequency	Addressees* *See attached "EERE Reporting Instructions" for complete submission instructions
I. PROJECT MANAGEMENT REPORTING <input type="checkbox"/> A. Research Performance Progress Report (RPPR) (RD&D Projects) <input checked="" type="checkbox"/> B. Progress Report (Non-RD&D Projects) <input checked="" type="checkbox"/> C. Financial Report (SF-425) <input checked="" type="checkbox"/> D. Special Status Report <input type="checkbox"/> E. Other (see Special Instructions)	Q Q QF A A	A. https://www.eere-pmc.energy.gov/SubmitReports.aspx B. www.page.energy.gov C. www.page.energy.gov D. Submit to DOE Project Officer E. https://www.eere-pmc.energy.gov/SubmitReports.aspx
II. SCIENTIFIC / TECHNICAL REPORTING <input type="checkbox"/> A. Journal Article-Accepted Manuscript <input type="checkbox"/> B. Scientific / Technical Conference Paper / Presentation / Proceeding <input type="checkbox"/> C. Scientific / Technical Software & Manual <input type="checkbox"/> D. Scientific / Technical Dataset <input type="checkbox"/> E. Other STI (Dissertation / Thesis, see Special Instructions)	A A A A A	A. http://www.osti.gov/eliink-2413 B. http://www.osti.gov/eliink-2413 C. http://www.osti.gov/estsc/241-4.jsp D. https://www.osti.gov/eliink/241-6 E. http://www.osti.gov/eliink-2413
III. CLOSEOUT REPORTING <input type="checkbox"/> A. Final Scientific / Technical Report <input type="checkbox"/> B. Patent Certification (DOE F 2050.11) <input checked="" type="checkbox"/> C. Final Property Report (SF-428 & SF-428B) <input type="checkbox"/> D. Software Deliverable Submission <input type="checkbox"/> E. Other (see Special Instructions)	F F O F F	A. http://www.osti.gov/eliink-2413 B. https://www.eere-pmc.energy.gov/SubmitReports.aspx & send to: JPLegalReviews@ee.doe.gov C. Submit to DOE Project Officer D. http://www.osti.gov/estsc/241-4.jsp E. https://www.eere-pmc.energy.gov/SubmitReports.aspx
IV. OTHER REPORTING <input type="checkbox"/> A. Intellectual Property Reporting Form (EERE 357) <input type="checkbox"/> B. Invention Utilization Report (EERE 356) <input type="checkbox"/> C. U.S. Manufacturing Report (EERE 358) <input type="checkbox"/> D. Project Management Plan (PMP) <input checked="" type="checkbox"/> E. Annual Incurred Cost Proposal <input type="checkbox"/> F. Annual Audit of For-Profit Recipients <input type="checkbox"/> G. Annual Property Inventory (SF-428) <input type="checkbox"/> H. Reporting Addendum (EERE 359) <input checked="" type="checkbox"/> I. Other (see Special Instructions)	A Y Y A Y180 A Y YF	A. http://www.iEdison.gov/ & https://www.eere-pmc.energy.gov/SubmitReports.aspx & send to: JPLegalReviews@ee.doe.gov C. https://www.eere-pmc.energy.gov/SubmitReports.aspx & send to: JPLegalReviews@ee.doe.gov D. https://www.eere-pmc.energy.gov/SubmitReports.aspx E. If EERE is the Cognizant Federal Agency, send to https://www.eere-pmc.energy.gov/SubmitReports.aspx and copy CostPrice@ee.doe.gov . Otherwise send to Cognizant Federal Agency F. See section IV, F, for instructions and due dates https://www.eere-pmc.energy.gov/SubmitReports.aspx & send to: CostPrice@ee.doe.gov G. send to CFO at: DOE-Audit-Submission@hq.doe.gov H. https://www.eere-pmc.energy.gov/SubmitReports.aspx I. https://www.eere-pmc.energy.gov/SubmitReports.aspx
<input checked="" type="checkbox"/> I. Other (see Special Instructions) I.1 Disposition of Historic Preservation Consultations by Category Report I.2 Annual Summary Applicable to Grantees continuing financing programs initiated with SEP Recovery Act Funds: I.3 Financial Programs Report I.4 Davis Bacon Reports	A A Q S	I.1 www.page.energy.gov I.2 Submit to DOE Project Officer I.3 www.page.energy.gov I.4 See instructions

E.O. 13858: Strengthening Buy-American Preferences for Infrastructure Projects

January 31, 2019 – Executive Order 13858 issued

“Infrastructure project” means a project to develop public or private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production, generation, and storage, including from fossil-fuels, renewable, nuclear, and hydroelectric sources; electricity transmission; gas, oil, and propane storage and transmission; electric, oil, natural gas, and propane distribution systems; broadband internet; pipelines; storm water and sewer infrastructure; drinking water infrastructure; cybersecurity; and any other sector designated through a notice published in the Federal Register by the Federal Permitting Improvement Steering Council.

E.O. 13858: Strengthening Buy-American Preferences for Infrastructure Projects

AWARD CLAUSE:

As appropriate and to the extent consistent with law, Recipients shall ensure and document that, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products (items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber) used in the project under this award shall be produced in the United States. This requirement shall flow down to all sub-awards including all contracts, subcontracts and purchase orders for work performed under the award.

Common Recipient Questions

Q: What is the difference between a subrecipient and a vendor?

A: Vendors provide supplies and services to the non-federal entity. A subrecipient receives a subaward to support part of a federal program. Vendors are allowed fee and profit, subrecipients are not.

[James: Do they care about the outcome of the project? Yes => Subrecipient; No => Vendor]

Q: What is the difference between a grant and a cooperative agreement?

A: Substantial Federal involvement:

- **EERE shares responsibility with the Recipient for the management, control, direction, and performance of the Project.**
- **EERE may intervene in the conduct or performance of work under this Award for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities.**
- **EERE may redirect or discontinue funding the Project based on the outcome of EERE's evaluation of the Project at the Go/No Go decision point.**
- **EERE participates in major project decision-making processes.**

Equipment

Definition:

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

Equipment (continued)

Disposition: 2 CFR §200.313 Equipment (e):

- (1) Items of equipment with a current per unit 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.
- (2) Items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
- (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

Equipment (continued)

Uniform Commercial Code (UCC) Financing Statements:

- Applies to For-Profit subrecipients only

Per 2 CFR §910.360 Real property and equipment(b)(4):

Properly record, and consent to the Department's ability to properly record if the recipient fails to do so, UCC financing statement(s) for all equipment purchased with Federal funds; such a filing is required when the Federal share of the financial assistance agreement is more than \$1,000,000. These financing statement(s) must be approved in writing by the contracting officer prior to the recording, and they shall provide notice that the recipient's title to all equipment (not real property) purchased with Federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the **Government retains an undivided reversionary interest in the equipment**. The UCC financing statement(s) must be filed before the contracting officer may reimburse the recipient for the Federal share of the equipment. The recipient shall further make any amendments to the financing statements or additional recordings, including appropriate continuation statements, as necessary or as the contracting officer may direct.

Audits

§200.501 Audit requirements:

(a) **Audit required.** A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) **Single audit.** A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) **Program-specific audit election.** When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

Audits (continued)

(d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards.

Prior Approval

§200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

Prior Approval (continued)

- (a) §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (b) §200.306 Cost sharing or matching;
- (c) §200.307 Program income;
- (d) §200.308 Revision of budget and program plans;
- (e) §200.311 Real property;
- (f) §200.313 Equipment;
- (g) §200.332 Fixed amount subawards;
- (h) §200.413 Direct costs, paragraph (c);
- (i) §200.430 Compensation—personal services, paragraph (h);
- (j) §200.431 Compensation—fringe benefits;
- (k) §200.438 Entertainment costs;
- (l) §200.439 Equipment and other capital expenditures;
- (m) §200.440 Exchange rates;
- (n) §200.441 Fines, penalties, damages and other settlements;

Prior Approval (continued)

- (o) §200.442 Fund raising and investment management costs;
- (p) §200.445 Goods or services for personal use;
- (q) §200.447 Insurance and indemnification;
- (r) §200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (s) §200.455 Organization costs;
- (t) §200.456 Participant support costs;
- (u) §200.458 Pre-award costs;
- (v) §200.462 Rearrangement and reconversion costs;
- (w) §200.467 Selling and marketing costs;
- (x) §200.470 Taxes (including Value Added Tax); and
- (y) §200.474 Travel costs.

That's All Folks

Thank you for your time.

Please do not hesitate to contact your DOE Project Officer, Grants Management Specialist, Contracting Officer, (or even me) if you have any questions.