

# **Recipient Guide to Award Negotiations with EERE**

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## Overview

Congratulations on being selected for award negotiations! This guide will help you navigate the award negotiation process, from the critical first few days after selection until the signing of the award.

The assigned Technology Manager / Technical Project Officer (TM/TPO) will be contacting you shortly to set up a negotiation call in order to finalize the Statement of Project Objectives (SOPO), Project Management Plan (PMP) (if required in the Funding Opportunity Announcement (FOA)), deliverables/milestones, schedule and budget. This call and any follow-up calls will allow the TM/TPO to provide updated programmatic guidance and direction from Energy Efficiency and Renewable Energy (EERE) in order to better align the project with current program objectives.

EERE has an aggressive deadline for the completion of award negotiations, typically 60 days after notification of selection. It is essential for you to mobilize your resources to meet this important deadline. Having the key resources and people on hand will help you complete the award negotiation process in a timely manner.

Throughout the award negotiations and the performance of the project, it is critically important that you: 1) respond to EERE personnel in a prompt manner and 2) fill out documentation completely and accurately. In addition, you should not submit Personally Identifiable Information (PII) to EERE.

### A. Personnel – EERE’s Team

Upon selection, EERE will assign a team of technical, contracting, and legal personnel to negotiate your award. It is critical to the negotiations process for you to respond to requests from EERE personnel.

#### i. Technical Team

The Technical Team consists of a Technology Manager / Technical Project Officer (TM/TPO) and a Project Monitor. The TM/TPO coordinates and manages the award negotiation with support from the Project Monitor. They work with you to negotiate a Statement of Project Objectives (SOPO), an aggressive schedule of technical milestones and deliverables, and a budget for the project (see Section II.D below for details). EERE’s intent is for you to update the information already provided in your application, not to have you create new documents from scratch.

#### ii. Contracting Team

The Contracting Team consists of a Grants/Contracting Officer (GO/CO) and a Grants Management Specialist (GMS). The Contracting Team is responsible for reviewing and approving all award documents including terms and conditions. The GO/CO is the **only person who has authority to obligate funds** for your award, as well as execute and modify the award.

Both the Contracting Team and the Technical Team are responsible for reviewing the proposed budget for the project. During the budget review, they verify cost data and ensure that proposed costs are consistently treated in accordance with the federal regulations and applicable cost principles. The Contracting Team determines the allowability, allocability, and reasonableness of proposed expenditures. They may send you questions or requests for clarifications from the Budget Justification. In addition, the Contracting Team may seek technical and cost input from the TM/TPO.

The Contracting Team will review your responses to the Accounting System Survey in the Pre-Award Information Sheet to determine if it is in compliance with Federal requirements and make a responsibility determination. In addition, with input from the Technical Team, the GO/CO will make a risk determination for the Recipient and for the proposed project. Based on this determination, the GO/CO may put additional restrictions and requirements into the Special Terms and Conditions of the award and will also determine the award payment method.

**iii. Legal Team**

The Legal Team is responsible for resolving legal issues relating to proposed awards. The Legal Team works with the Contracting Team to review and finalize awards, as appropriate. In addition, the Legal Team works with Recipients to resolve a wide range of legal and contracting issues.

**iv. Patent Counsel**

DOE Patent Counsel is responsible for resolving intellectual property issues relating to proposed awards. DOE Patent Counsel works with Recipients to address any questions or concerns with the Intellectual Property terms and conditions of the awards and, when applicable, negotiate protection of certain technical data from public release or waiver of DOE patent rights.

**v. National Environmental Policy Act (NEPA) Team**

The NEPA team is responsible for reviewing your project for environmental impact, which is required by law for all federally-funded projects. Once your SOPO negotiations are nearly complete, the Technical Team will ask you to submit an Environmental Questionnaire (EQ-1) about your project. The NEPA Team will review your EQ-1 and work with the Technical Team to determine if any project holds or mitigation activities are necessary before the project begins. See the [EQ-1 Submission Guide](#) for instructions on how to submit this form.

## **B. Schedule**

Please submit all required application documents to the GMS identified on your Selection Letter by the designated submission date. Failure to submit the required

application documents by the stated due date may lead to a determination of non-responsiveness, and EERE may cancel the negotiations.

### **C. Revisions to your Application**

We appreciate the time, effort, and energy you invested in preparing your Full Application. During the award negotiations, you may be required to update the information provided in your Full Application, as described below.

- **Statement of Project Objectives (SOPQ)**: The selection of your project may be conditional upon changes to the project, as specified in your Selection Letter. The Technical Team is responsible for ensuring that these changes have been implemented into the revised application documents, as applicable. Changes may include, but are not limited to, funding only a portion of the work you proposed in your Full Application; requesting changes to your team (adding new team members or dropping others); revising the scope of work; and/or revising your proposed budget. In addition, the technical milestones and deliverables you proposed for your project have been thoroughly vetted during the review process. The input from this process will be discussed with you and factored into the project by the TM/TPO; aggressive technical milestones and deliverables will be required.
- **Budget Justification**: You will need to update your budget to reflect any changes that result from the technical negotiations and/or changes that have occurred since you submitted your application. The Contracting Team will review your budget to ensure that costs are reasonable, allowable and allocable, and necessary for the proposed project. The Contracting Team may require further changes to your budget and supporting documentation for the proposed expenditures (e.g., equipment or vendor quotes, cost share commitment letters, indirect rate agreements, etc.). They may impose conditions on your award and may require you to complete certain actions within short timeframes.
- **Data Protection and Intellectual Property**: The DOE Patent Counsel may negotiate protection of certain technical data from public release or waiver of DOE patent rights (depending on the FOA and type of Recipient).

Any proposed changes that affect the schedule, cost, or milestones should be communicated to the Technology Manager and GO/CO. All negotiated changes will be approved by the GO/CO when the award is made and released to [FedConnect](#).

## **II. Award Package**

### **A. Overview**

The outcome of award negotiations will be your legally binding award package, which you will receive in FedConnect (see Section III.A below for how to register in

FedConnect). Receiving the award package signals that award negotiations are complete and you may begin work on your project. To give you an idea of what that final award package will look like, please review the sections described below. The Contracting Team will customize some aspects of the award package for your specific project, however, use of a standard agreement expedites the award negotiation process and reduces the administrative burden associated with EERE’s active project management.

The Award Package consists of the following documents:

Attachment Number	Document
	Assistance Agreement Form
	Special Terms and Conditions
Attachment 1	Statement of Project Objectives (SOPO)
Attachment 2	Reporting Checklist and Instructions
Attachment 3	Budget Information
Attachment 4	Intellectual Property Provisions
Attachment 5	Diversity, Equity, and Inclusion (DEI) Plan

EERE will add, remove and/or modify the above listed documents, with GO/CO approval, as appropriate for your award.

EERE generally uses cooperative agreements to fund financial assistance awards. Under cooperative agreements, EERE and Recipients share responsibility for the direction of projects. The specific nature of the collaboration is defined in the award term entitled “Substantial Involvement” (this award term will be included in your project’s Special Terms and Conditions once award negotiations are complete).

**B. Assistance Agreement Form**

The Assistance Agreement Form includes key information regarding the project, such as the award number, the name of the Recipient, the name of the principal investigator, the period of performance, the total project cost, the Recipient’s cost share, and Recipient and DOE contact information.

After the GO/CO approves the final award documents and releases them to FedConnect, you are required to view and acknowledge receipt of the award in FedConnect. Instructions for acknowledging awards are provided at: [https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect\\_Ready\\_Set\\_Go.pdf](https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf). If you have difficulties acknowledging the award in FedConnect, please contact the FedConnect support at 1-800-899-6665.

### **C. Special Terms and Conditions**

EERE has established a standard set of terms and conditions for cooperative agreements. The Special Terms and Conditions will be modified to delete non-applicable provisions or to add or amend provisions required in special circumstances. Changes will only be approved by the GO/CO in exceptional circumstances.

If you have questions concerning the Special Terms and Conditions, please contact the GMS assigned to your award.

### **D. Attachment 1, Statement of Project Objectives (SOPO)**

The SOPO is refined and finalized during award negotiations from the SOPO that was submitted with the original application. The SOPO is used to describe the overall objectives of the project, provide a description of the tasks to be performed, and identify the milestones and Go/No Go decision points. Failure to achieve the outcomes, milestones, and decision points to specification in a timely manner may result in the discontinuation of a project; therefore, careful consideration should be taken in its development. The SOPO is the baseline document for both the Recipient's project team and EERE to measure and evaluate the progress of the project.

Attachment 1 is composed of two parts. The first section will include a description of the project, including a clear and concise statement of the goals and objectives of the project, a summary description of the overall scope and approach, and descriptions of the tasks to be performed, including expected outcomes/milestones. The second part is a Milestone Summary Table that lists specific milestones for each task and the Go/No Go decision criteria that will be evaluated. Each project will have at least one Milestone per quarter and one Go/No Go decision point per 12 to 18 month budget period. Both milestones and Go/No Go decision points must include specific, measurable, attainable, realistic, and timely (SMART) criteria, and a verification method.

Each project will be subject to a periodic project evaluation referred to as a Go/No Go Review. Federal funding beyond the Go/No Go decision point (continuation funding), is contingent upon: (1) availability of Federal funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) Recipient's technical progress compared to the Milestone Summary Table stated in Attachment 1 to this Award; (4) Recipient's submittal of required reports; (5) Recipient's compliance with the terms and conditions of the Award; (6) EERE's Go/No-Go decision; (7) the Recipient's submission of a continuation application; and (8) written approval of the continuation application by the GO/CO.

As a result of the Go/No Go Review, EERE may, at its discretion, authorize the following actions: (1) continue to fund the project, contingent upon the availability of funds appropriated by Congress for the purpose of this program and the

availability of future-year budget authority; (2) recommend redirection of work under the project; (3) place a hold on federal funding for the project, pending further supporting data or funding; or (4) discontinue funding the project because of insufficient progress, change in strategic direction, or lack of funding.

If you have questions concerning Attachment 1, please contact the TM/TPO assigned to your award.

### **E. Attachment 2, Reporting Checklist and Instructions**

EERE has established reporting requirements dependent upon project type (e.g., Outreach, R&D, Demonstration, etc.) and Recipient type (e.g., for-profit, non-profit, university, etc.). Recipients are required to provide EERE with quarterly progress reports, quarterly financial reports, certain annual reports, and periodic reports and submissions. In addition, Recipients are required to complete certain reports upon the closeout or termination of the award. Reporting instructions are provided in Attachment 2.

If you have questions concerning Attachment 2, please contact your assigned GMS.

### **F. Attachment 3, Budget Information**

Applicants are required to submit an Application for Federal Assistance (SF-424) and Budget Justification Workbook with their Full Application. Upon selection, the Contracting Team will review your budget documents, and identify the information and documents that they need to complete their analysis and approve the proposed budget. During your project, the Contracting Team and the Technical Team will use the budget justification approved during award negotiations to compare against your invoices/requests for reimbursement. All expenditures must be allowable, allocable, and reasonable in accordance with the applicable federal cost principles.

Refer to the following applicable federal cost principles for more information:

- Federal Acquisition Regulation (FAR) Part 31 for For-Profit entities; and
- 2 CFR Part 200 Subpart E - Cost Principles for all other non-federal entities.

If you have questions concerning Attachment 3, please contact your assigned GMS.

### **G. Attachment 4, Intellectual Property Provisions**

The intellectual property provisions of EERE awards are based on the type of project and the type of Recipient (e.g., small business, large business, or non-profit, etc.).

#### **i. Inventions and Patent Rights**

By law, the Bayh-Dole Act, domestic small businesses and non-profit organizations may retain title to inventions made under the award.



DOE takes title to inventions made under the award by all other Recipients (e.g., large businesses), unless DOE grants a patent waiver. DOE may issue a class patent waiver that applies to all Recipients under a particular FOA or a certain type or class of Recipients over multiple FOAs. The FOA will indicate when a class patent waiver applies. If a Recipient is not covered by the Bayh-Dole Act or a class patent waiver, a Recipient may negotiate an advance patent waiver with DOE that would apply to that particular Recipient for its work under an award or identified invention waiver that applies to a particular invention of the Recipient.

In order to retain title to an invention made under the award, either by law or by patent waiver, a Recipient must disclose, elect to take title, and pursue and maintain patent protection for the invention. While the Recipient may retain title to the invention, the Federal Government will retain certain rights to the invention, including:

- **Government Use License:** The Federal Government may practice, or have it practiced on behalf of the Government, without paying royalties.
- **March-In Rights:** Under “march-in rights,” the Government may require a Recipient who has elected to retain title to an invention (or their assignees or exclusive licensees) to grant a license for use of the invention to a third party. In addition, the Government may grant licenses for use of the invention when Recipient or their assignees and exclusive licensees refuse to do so.

Since the creation of march-in rights in 1980, the Department of Energy has never exercised its march-in rights to any subject inventions. However, the Department’s history of not exercising march-in rights has no impact on the Department’s ability and willingness to exercise march-in rights if the Department determines that conditions exist that make march-in rights necessary. Specifically, the Department may exercise its march-in rights if it determines that such action is necessary under any of the four following conditions:

- The owner or licensee has not taken or is not expected to take effective steps to achieve practical application of the invention within a reasonable time;
- The owner or licensee has not taken action to alleviate health or safety needs in a reasonably satisfied manner;
- The owner has not met public use requirements specified by Federal statutes in a reasonably satisfied manner; or

- The Preference for United States industry requirement has not been met (see below).

Any determination that march-in rights are warranted must follow a fact-finding process in which the Recipient has certain rights to present evidence and witnesses, confront witnesses and appear with counsel and appeal any adverse decision.

In addition to the above, title to an invention may be conditioned on compliance with an agreed upon U.S. manufacturing commitment. Through DOE's statutory authorities, patent waivers and determination of exceptional circumstances, most Recipients must usually agree that any products embodying or produced through the use of an invention conceived or first actually reduced to practice under the award will be substantially manufactured in the United States.

**ii. Data Rights**

Data rights (including software) differ based on whether the data was developed at private expense outside of the award or was first produced under the award.

- "Limited Rights Data" or "Restricted Rights Software": Data used to perform the work under the award that was developed at private expense outside of the award is referred to as limited rights data or, in the case of software, "Restricted Rights Software." In most cases, EERE does not require delivery of limited rights data or restricted rights software. However, the TM/TPO should have access to the limited rights data and the restricted rights software at the Recipient's facility in order to verify or evaluate the work under the award. Although it is not the common practice, EERE may ask that certain limited rights data or restricted rights software be delivered to EERE depending on the nature of the limited rights data or restricted rights software and whether delivery is necessary to verify or evaluate the work under the award. In such cases, EERE will negotiate the delivery of the limited rights data or restricted rights software in the award including providing marking instructions that make clear that EERE's rights to the limited rights data or restricted rights software is limited to the project and will not be disclosed to the public.

In the Pre-Award Information Sheet, you will be required to identify the limited rights data and restricted rights data that will be used under the award so the TM/TPO and DOE Patent Counsel can determine how to address the delivery of limited rights data or restricted software in the award.

- “Unlimited Rights Data” and “Protected Data”: EERE retains unlimited rights in technical data first produced under an award, including the right to distribute to the public. However, depending on the FOA, EERE may agree to protect from public disclosure for up to five (5) years certain categories of data produced under the award, referred to as “Protected Data.”

### iii. **Copyright**

Normally, Recipients may assert copyright in copyrightable data, such as software, first produced under the award without EERE approval. When copyright is asserted, the Government retains a government purpose license.

However, depending on the FOA, asserting copyright on software may be conditioned on the Recipient making the software available as Open-Source Software (OSS). Also, when the objective of the FOA is to develop education materials or curricula, EERE may restrict the Recipient’s ability to assert copyright.

If you have questions concerning Attachment 4, please contact the GMS assigned to your award.

## **H. Diversity, Equity, and Inclusion (DEI) Plan**

Prior to award, the Recipient must submit a Diversity, Equity, and Inclusion (DEI) Plan that describes the actions the Recipient will undertake to incorporate diversity, equity, and inclusion elements in the project being negotiated for Award. The Recipient must meet the stated objectives and milestones set forth in its DEI Plan, which is incorporated into the Award as Attachment 5. A report on the Recipient’s progress towards meeting the objectives milestones set forth in the DEI plan must be included in the continuation application.

## **III. Required Registrations**

### **A. FedConnect**

Recipients are required to acknowledge receipt of the award in FedConnect. If you are not already registered in FedConnect, please register immediately. To register in FedConnect, please refer to <https://www.fedconnect.net/FedConnect/>.

To learn how to use FedConnect, please refer to the FedConnect “Ready, Set, Go” [User Guide](#). For technical assistance, contact FedConnect at the [helpdesk](#) or call 1-800-899-6665.

Once the award has been approved by the GO/CO, you will receive notification via FedConnect. At that point, you will need to login to FedConnect and acknowledge

receipt of the award. Additionally, you will receive and acknowledge any subsequent award medications in FedConnect.

### **B. System for Award Management (SAM)**

Recipients are required to register with SAM. Upon registering, SAM will automatically assign a Unique Entity Identifier (UEI). EERE cannot execute a funding agreement with a Recipient until it has completed its SAM registration.

To register with SAM, please refer to <https://www.sam.gov/SAM/>. It may take several weeks to complete your registration with SAM; therefore, Recipients should begin this process as soon as possible to avoid delays in the execution of a funding agreement.

Please note that Recipients are required to maintain and update their information within SAM throughout the duration of the project.

### **C. Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS)**

Recipients are required to register with FSRS. EERE cannot execute a funding agreement with a Recipient until it has completed its FSRS Registration. To register with FSRS, please refer to <https://www.fsrs.gov/>.

In addition to registration, Recipients are required to report to FSRS first tier subawards, the names and total compensation of each of the Recipient's five most highly compensated executives and the names and total compensation of each Subrecipient's five most highly compensated executives. Please refer to <https://www.fsrs.gov/> for guidance on reporting requirements.

Please note that Recipients are required to maintain and update their information within FSRS throughout the duration of the project.

## **IV. EERE Grants/Contracting Officer Determinations**

The Grants/Contracting Officers are required to make certain determinations before executing the award. They are required to assess your financial management and project management capabilities. In addition, they are required to review the proposed cost share for the project.

### **A. Financial Management Assessment**

The GO/CO is required to review your answers to the Accounting System Survey in the Pre-Award Information Sheet to determine if it is in compliance with Federal requirements and to evaluate your ability to manage the financial aspects of an award and your plans to accomplish project activities with reasonable economy and efficiency. The standards for acceptable financial management systems are found in the Code of Federal Regulations 2 CFR 200.302.

In addition, a business review will be undertaken to: review the reasonableness, allowability and allocability of proposed costs (both direct and indirect costs), review the source and amount of proposed cost sharing to ensure that the cost share meets the minimum requirements listed in the FOA and to ensure that the costs are reasonable, allowable, and allocable, and review the plans for contracts and subawards.

## **B. Determination of Responsibility**

The GO/CO is required to make an affirmative determination of responsibility. The responsibility determination includes the financial management assessment and business review; reviews of audits under 2 CFR 200.501 (educational institutions, non-profit organizations, or state/local governments) and 2 CFR 910.501 (for-profit entities); and review of activities under previous awards, especially submission of reports. The responsibility determination considers if the Recipient has the administrative and programmatic capabilities to perform the proposed project.

The term “administrative capability” means the capability of a Recipient to develop and implement administrative systems, including systems related to financial management, property management, procurement standards, financial reporting, record-keeping, and submission of administrative reports/certifications for award closeout.

The term “programmatic capability” means the technical capability of a Recipient to successfully carry out a project taking into account such factors as:

- The Recipient’s performance in successfully completing Federally and/or non-Federally funded projects similar in size, scope, and relevance to the proposed project;
- The Recipient’s history of meeting reporting requirements on prior or current assistance agreements with Federal and/or non-Federal organizations and submitting acceptable final technical reports;
- The Recipient’s organizational experience and plans for timely and successful achievement of the objectives, technical milestones and deliverables in Attachment 1; and
- The Recipient’s staff expertise/qualifications and resources or ability to obtain them, to successfully achieve the goals of the project.

Consistent with EERE’s mandate to exercise good Federal stewardship, the GO/CO may insert one or more conditions into your award’s Special Terms and Conditions after completing a risk assessment.

### **C. Cost Share Allowability**

Cost Share funding is subject to all regulations applicable to Federal funding. Regulations specifically applying to cost share can be found in 2 CFR 200.306 & 2 CFR 910.130, and in the applicable Statutory Authority for a project (e.g. Energy Policy Act of 2005).

Cost share can be of two different types: cash contributions or “in-kind” contributions. In-kind contributions can take many forms, each of which must be assigned a dollar value to be included in the budget. Allowable in-kind contributions include, but are not limited to: rental value of buildings or equipment or the value of a donated service.

### **D. Cost Share Commitment Letters**

The Recipient is required to provide cost share commitment letters from Subrecipients or third parties that are providing cost share, whether cash or in-kind. Each Subrecipient or third party that is contributing cost share must provide a letter on appropriate letterhead that is signed by an authorized corporate representative. The letter must state, in unconditional and unequivocal terms, its commitment to provide cost share. The letter may not include any conditions for receipt of the cost share contributions. The letter must state the amount and form of cost share (cash or in-kind), the source and precise nature of the contribution, and the duration and timing of the commitment (e.g., two years beginning in fall 2022).

The GO/CO will review this information and confirm that the cost share contributions are allowable under the applicable Federal cost principles, specified in the project budget, verifiable from the Recipient’s records, and necessary and reasonable for proper and efficient accomplishment of the project. Every cost share contribution must be reviewed and approved in advance by the GO/CO and incorporated into the project budget before the expenditures are incurred. Recipient cost share will be provided on an invoice basis, unless a waiver is granted by the GO/CO.

### **E. Pre-award Costs**

Recipients must request prior written approval to charge pre-award costs. Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and **only** with the written approval of the Federal awarding agency, through the GO/CO assigned to the award. Pre-award costs cannot be incurred prior to the Selection Official signing the Selection Statement.

Pre-Award expenditures are made at the Selectee’s risk; EERE is not obligated to reimburse costs: (1) in the absence of appropriations; (2) if an award is not made; or

(3) if an award is made for a lesser amount than the Selectee anticipated. Nothing contained in the pre-award cost reimbursement regulations or any pre-award costs approval letter from the GO/CO override NEPA requirements.

EERE does not guarantee or assume any obligation to reimburse pre-award costs incurred prior to receiving written authorization from the GO/CO. If the applicant elects to undertake activities that DOE determines may have an adverse effect on the environment or limit the choice of reasonable alternatives prior to receiving such written authorization from the GO/CO, the applicant is doing so at risk of not receiving federal funding for their project and such costs may not be recognized as allowable cost share. Nothing contained in the pre-award cost reimbursement regulations or any pre-award costs approval letter from the GO/CO override these NEPA requirements to obtain the written authorization from the GO/CO prior to taking any action that may have an adverse effect on the environment or limit the choice of reasonable alternatives. Likewise, if an application is selected for negotiation of award, and the Recipient elects to undertake activities that are not authorized for federal funding by the GO/CO in advance of EERE completing a NEPA review, the Recipient is doing so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.

#### **F. General Provisions for Selected Items of Cost (Unallowable Costs)**

The following link will take you to the [electronic Code of Federal Regulations](#) (eCFR). Scroll down this page to General Provisions for Selected Items of Cost. §200.421 through §200.475 provide guidance for selected items of cost that can be unallowable, that a Recipient may encounter in a Federal financial assistance award. These enumerated costs categories are neither mutually exclusive nor collectively exhaustive, but are a general guide.

#### **V. Other Resources**

Other resources that are helpful in understanding the financial opportunities process can be found at <https://www.energy.gov/eere/funding/eere-funding-application-and-management-forms>.