

ADMINISTRATIVE AND LEGAL REQUIREMENTS DOCUMENT (ALRD)



**U.S. Department of Energy
Energy Efficiency and Renewable Energy
Golden Field Office**

**State Energy Program (SEP)
Infrastructure Investment and Jobs Act (IIJA) of 2021
SEP - IIJA ALRD
CFDA Number: 81.041, State Energy Program**

PURPOSE

The purpose of this ALRD is to provide guidance for the balance of the \$500,000,000 Congress appropriated for State Energy Program formula awards in the Infrastructure Investment and Jobs Act (IIJA) of 2021. On March 29, 2022, the U.S. Department of Energy (DOE) issued the State Energy Security Plan (SESP) ALRD that allowed states to request a portion of this IIJA funding to prepare a SESP that meets the requirements set out by the IIJA. This ALRD and State Energy Program Notice 22-03 (attached) details how states should apply for the balance of their allocations.

Issue Date: 8/26/2022

Application Due Date: 11/4/2022

REGISTRATION/SUBMISSION REQUIREMENTS

Registration Requirements: Allow at least 21 days to complete registrations.

If you haven't already registered, there are several one-time actions you must complete in order to receive an award:

Register in the System for Award Management (SAM) at <https://sam.gov>. Applicants who are not registered with SAM should allow several weeks to complete this requirement. It is suggested that the process be started as soon as possible. **Prime awardees must update their SAM registration annually.** Please note, there are new requirements for registering in SAM. Entities registering in SAM must submit a notarized letter appointing their authorized Entity Administrator. Please see SAM website for updates, alerts, and FAQs. For questions, call 866-606-8220 or 334-206-7828.

Register in FedConnect to receive and acknowledge your award at <https://www.fedconnect.net/>. See the Quick Start Guide at https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf. For additional questions, email support@fedconnect.net or call 1-800-899-6665.

Have a Login for the Performance and Accountability for Grants in Energy (PAGE) System at <https://www.page.energy.gov/default.aspx> in order to submit your application. For questions regarding PAGE, refer to the Help Menu in PAGE or contact the PAGE hotline at PAGE-Hotline@ee.doe.gov or 1-866-492-4546.

States should contact their respective DOE Project Officer on state-specific questions. See Appendix A for a list with contact information.

Electronic Signatures: Acknowledgement of award documents by the Grantee's authorized representative through electronic systems used by the Department of Energy, including FedConnect, constitutes the Grantee's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Grantee's authorized representative constitutes the Grantee's electronic signature.

IMPORTANT: The electronically signed Assistance Agreement with attached award documents distributed via FedConnect is the formal authorization and approval from the Contracting Officer. Grantees may not rely on PAGE as the formal authorization and approval. Award documents in the initial award and any modifications to the award must be reviewed and acknowledged by the Grantee in FedConnect.

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PART I AUTHORITY

Title III of the Energy Policy and Conservation Act (EPCA), as amended, authorizes the Department of Energy to administer the State Energy Program (SEP). All Grant awards made under this program shall comply with applicable law, including regulations contained in [2 CFR Part 200](#) as amended by [2 CFR Part 910](#), [10 CFR Part 420](#) and other procedures applicable to this regulation as DOE may, from time-to-time, prescribe for the administration of financial assistance.

PART II AWARD INFORMATION

A. TYPE OF AWARD INSTRUMENT

DOE will award Grants.

B. ESTIMATED FUNDING

States shall administer DOE funds received under the SEP in accordance with Federal rules and regulations and state policies and procedures. The Grantee is to manage Federal Funds in a prudent, effective and efficient manner to accomplish program objectives.

Funding Level: Individual state allocations are included as an attachment to this document.

C. PERIOD OF PERFORMANCE

IJA awards will consist of a 5-year Project and Budget Period.

PART III ELIGIBILITY INFORMATION

A. ELIGIBLE APPLICANTS

In accordance with DOE Program Rule 10 CFR Part 420, SEP funding is only available to states, U.S. Territories, and the District of Columbia (hereinafter referred to as “states”). No other entity types may be considered for this funding.

B. COST MATCHING

Cost match is not required for these awards.

PART IV APPLICATION AND SUBMISSION INFORMATION

A. CONTENT AND FORM OF APPLICATION

The application must be submitted via the PAGE online system at <https://www.page.energy.gov/default.aspx>. DOE reserves the right to request additional or clarifying information for any reason deemed necessary. Applications will be reviewed for consistency with the SEP program objectives.

PART V AWARD ADMINISTRATION INFORMATION

A. AWARD NOTICES

An Assistance Agreement issued by the Contracting Officer is the authorizing award document. The Assistance Agreement normally includes, either as an attachment or by reference: (1) Special Terms and Conditions; (2) Program regulations [10 CFR Part 420](#); (3) Application as approved by

DOE; (4) DOE assistance regulations at [2 CFR Part 200](#) as amended by [2 CFR Part 910](#); (5) National Policy Assurances To Be Incorporated As Award Terms; (6) Annual File; (7) Master File; (8) Budget Summary; (9) Intellectual Property Provisions; (10) Federal Assistance Reporting Checklist, which identifies the Reporting Requirements; and (11) National Environmental Policy Act (NEPA) Determination. These documents are sent to the Recipient via FedConnect.

B. FUNDING RESTRICTIONS

All expenditures must be allowable, allocable, and reasonable in accordance with the applicable Federal cost principles. Refer to the following Federal cost principles for more information: [2 CFR Part 200](#) as amended by [2 CFR Part 910](#).

Under [2 CFR Part 200](#) as amended by [2 CFR Part 910](#) regulations, the cost principles are contained in Subpart E–Cost Principles within [2 CFR Part 200](#).

C. REPORTING

Reporting requirements are identified on the Federal Assistance Reporting Checklist (FARC), attached to the award agreement.

Awards initiated since 10/1/2010 are subject to the requirement of Reporting Subawards and Executive Compensation to comply with the Federal Funding and Transparency Act of 2006 (FFATA). Additional information about this requirement can be found in the Special Terms and Conditions of the state’s award, at <https://www.fsr.gov>, and in [2 CFR Part 170](#).

Several SEP Program Notices also contain information regarding reporting and can be located at <https://energy.gov/eere/wipo/state-energy-program-guidance>

D. ADMINISTRATIVE AND NATIONAL POLICY REQUIREMENTS

1. Administrative Requirements

- The administrative requirements for DOE grants and cooperative agreements are contained in:
 - [2 CFR Part 200](#) as amended by [2 CFR Part 910](#) and [10 CFR Part 420](#)
 - [2 CFR Part 25](#) – Universal Identifier and Central Contractor Registration
 - [2 CFR Part 170](#) – Reporting Subaward and Executive Compensation

The Electronic Code of Federal Regulations is found at www.ecfr.gov.

2. National Policy Requirements

The National Policy Assurances to be incorporated as Award Terms are located at <http://www.nsf.gov/awards/managing/rtc.jsp>.

Intellectual Property Provisions. The standard DOE financial assistance intellectual property provisions applicable to the various types of recipients are located at <http://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>.

3. Environmental Review in Accordance with National Environmental Policy Act (NEPA)

EERE's decision whether and how to distribute Federal funds is subject to the National Environmental Policy Act (42 USC 4321, et seq.). NEPA requires Federal agencies to integrate environmental values into their decision-making processes by considering the potential environmental impacts of their proposed actions.

For further information on NEPA, see section 6.3 in the Application Instructions.

4. Buy America Requirements

The IIJA provides new direction and a significant amount of funding across a number of infrastructure areas. The law also created a new Buy America (BA) framework that applies to certain federally-funded projects, regardless of whether or not the funding for those projects originated in IIJA.

Per Section 70914 of IIJA, "Application of Buy America Preference," this requirement is to be applied as follows:

"Not later than 180 days after the date of enactment of this Act¹, the head of each Federal agency shall ensure that none of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." (emphasis added)

Some of the definitions provided in IIJA are necessary to implement the language above. Section 70912 of IIJA provides the following definition:

- **Infrastructure** includes, at a minimum, the structure, facilities, and equipment for, in the United States:
 - A. Roads, highways, and bridges;
 - B. Public Transportation;
 - C. Dams, ports, harbors, and other maritime facilities;

¹ May 14, 2022

- D. Intercity passenger and freight railroads;
- E. Freight and intermodal facilities;
- F. Airports;
- G. Water systems, including drinking water and wastewater systems;
- H. Electrical transmission facilities and systems;
- I. Utilities;
- J. Broadband infrastructure; and
- K. Buildings and Real property.²

- **Project** means the construction, alteration, maintenance, or repair of infrastructure in the United States.
- **Financial Assistance** is given the same definition that is provided in the government-wide financial assistance regulations at 2 C.F.R. 200.2; but is also expanded to include “all expenditures by a Federal agency to a non-Federal entity for an infrastructure project.”³
- Because the BA framework applies to “Infrastructure Projects,” the BA requirement will not apply unless it involves the construction, alteration, repair, or maintenance of one of the items defined as “infrastructure,” above.

Requirements of the Buy America provision

Any projects that are categorized as “Infrastructure Projects” will require that any iron, steel, manufactured goods, and construction materials used in the project to be produced in the United States. This means something a little different for each product:

- **Iron and Steel:** All manufacturing processes, from the initial melting stage through the application of coatings must occur in the United States;
- **Manufactured products:** The manufactured product must be 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% of the total cost of all components of the manufactured product;
- **Construction Material:** All manufacturing processes for the construction material occurred in the United States.

Recipients who undertake “infrastructure projects” must purchase all iron, steel, manufactured products, and construction materials for the project that have been produced according to the standards above, unless a waiver is granted. Recipients will also need to be prepared to report on the origin of these products as part of the execution of their Federal award.

² Per current OMB guidance, “buildings and real property” will likely only apply to “public buildings or non-public buildings utilized for a public purpose,” and will not include privately-owned, privately-used buildings.

Waivers

Section 70914 of IJJA, in addition to defining the scope of application for the BA requirement, also discusses the process by which a waiver of the requirement may be requested, evaluated, and either granted or denied. There are two types of waivers: standard waivers and waivers of general applicability.

Standard waivers are those that are requested and processed with respect to specific, individual projects, and will typically originate from the recipient who is being asked to apply the BA requirement.

Waivers of General Applicability are waivers that apply broadly, for instance waiving entire classes of products from the domestic production requirements or waiving all projects under a given program or FOA. These waivers are time-limited, carry a more substantial public notice and comment requirement, and will likely require more scrutiny over time.

Waivers can be granted based on three justifications:

1. Applying the domestic preference requirement would be inconsistent with the public interest;
2. 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. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall product by more than 25 percent.

In general, the waiver process will proceed as follows:

1. A recipient sends the Agency a waiver request, which must include the justification being cited and an analysis of why that justification should allow for the recipient's exemption from the domestic preference requirement;
2. If the Agency determines that issuance of a waiver is warranted, the Agency will draft a detailed written explanation for the proposed determination to issue the waiver. The Agency will be required to publish this explanation on its website, as well as a website designated by OMB for a period of no less than 15 days for public comment on the proposed waiver.
3. Following the public comment period and provided that the comments provided by the public do not change the Agency's determination to issue the waiver, the Agency may finalize the waiver and notify the recipient.

5. Davis Bacon Requirements

Projects awarded under this ALRD will be funded under Division D of the Bipartisan Infrastructure Law. Accordingly, per section 41101 of that law, all laborers and mechanics employed by the applicant, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work funded in whole or in part under this ALRD 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).

By accepting an award as a result of this ALRD, the Applicant is acknowledging the DBA requirements above, and confirming that the laborers and mechanics performing construction, alteration, or repair work on projects funded in whole or in part by awards made as a result of this ALRD 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).

Applicants acknowledge that they will 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) ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from contracts and subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.
- (3) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (4) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (5) 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).
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.

(10) 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.

Recipients of funding under this FOA will also be required to undergo Davis-Bacon Act compliance training and to maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The U.S. Department of Labor (“DOL”) 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>.

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>.

PART VI OTHER INFORMATION

A. INTERGOVERNMENTAL REVIEW

Program Subject to Executive Order 12372

This program is subject to [Executive Order 12372](#) (Intergovernmental Review of Federal Programs) and the regulations at [10 CFR Part 1005](#).

One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by state and local governments for coordination and review of proposed Federal financial assistance.

Applicants should contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the state's process under [Executive Order 12372](#). The names and addresses of the SPOCs are listed on the Web site of the Office of Management and Budget at Intergovernmental Review (SPOC List) (whitehouse.gov) [Intergovernmental Review \(SPOC List\) \(whitehouse.gov\)](#).

B. GOVERNMENT RIGHT TO REJECT OR NEGOTIATE

DOE reserves the right, without qualification, to reject any or all applications received in response to this ALRD and to select any application, in whole or in part, as a basis for negotiation and/or award.

C. COMMITMENT OF PUBLIC FUNDS

The Contracting Officer is the only individual who can make awards or commit the Government to the expenditure of public funds. A commitment by other than the Contracting Officer, either explicit or implied, is invalid.

D. LOBBYING RESTRICTIONS

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.

E. EXPENDITURE RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to support or oppose union organizing.

E. MODIFICATIONS

Modifications to this Administrative and Legal Requirements Document will be processed and disseminated in the same manner as other State Energy Program Notices.

F. PROPRIETARY APPLICATION INFORMATION

DOE will use data and other information contained in applications strictly for evaluation purposes. Applicants should not include confidential, proprietary, or privileged information in their applications unless such information is necessary to convey an understanding of the proposed project.

Applications containing confidential, proprietary, or privileged information must be marked as described below. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose.

The cover sheet of the application must be marked as follows and identify the specific pages containing confidential, proprietary, or privileged information:

Please be aware that all information provided to DOE (including confidential proprietary or confidential commercial information) is subject to public release under the Freedom of Information Act (FOIA). (5 U.S.C. § 552(a) (3) (A) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524). When a FOIA request covers information submitted to DOE by an applicant, and the cognizant DOE FOIA Officer cannot make an independent determination regarding the public releasability of this information, the cognizant DOE FOIA Officer will contact the submitter and ask for comment regarding the redaction of information under one or more of the nine FOIA exemptions. However, the cognizant DOE FOIA Officer will make the final decision regarding FOIA redactions. Submitters are given a minimum of 7 days to provide redaction comments and if DOE disagrees with the submitter's comment, DOE will notify the submitter of the intended public release no less than seven (7) days prior to the public disclosure of the information in question.” ([10 CFR Part 1004.11](#)).

G. PROTECTED PERSONALLY IDENTIFIABLE INFORMATION

In responding to this ALRD, Applicants must ensure that Protected Personally Identifiable Information (PII) is not included in the application documents. PII is defined by the Office of Management and Budget (OMB) and DOE as:

Any information about an individual maintained by an agency, including but not limited to, education, financial transactions, medical history, and criminal or employment history and information that can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information that is linked or linkable to an individual.

This definition of PII can be further defined as: (1) Public PII and (2) Protected PII.

Public PII: PII found in public sources such as telephone books, public websites, business cards, university listing, etc. Public PII includes first and last name, address, work telephone number, email address, home telephone number, and general education credentials.

Protected PII: PII that requires enhanced protection. This information includes data that if compromised could cause harm to an individual such as identity theft.

Listed below are examples of Protected PII that Applicants must not include in their application.

- Social Security Numbers in any form
- Place of Birth associated with an individual
- Date of Birth associated with an individual
- Mother's maiden name associated with an individual
- Biometric record associated with an individual
- Fingerprint

- Iris scan
- DNA
- Medical history information associated with an individual
- Medical conditions, including history of disease
- Metric information, e.g., weight, height, blood pressure
- Criminal history associated with an individual
- Employment history and other employment information associated with an individual
- Ratings
- Disciplinary actions
- Performance elements and standards (or work expectations) are PII when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal
- Financial information associated with an individual
- Credit card numbers
- Bank account numbers
- Security clearance history or related information (not including actual clearances held)

PART VII REFERENCE MATERIAL

IIJA SEP Formula Allocations
State Energy Program Notice 22-03
IIJA Application Checklist