



## **TRANSMISSION FACILITATION PROGRAM REQUEST FOR PROPOSALS – CAPACITY CONTRACTS**

**RFP Number: GDO-TFPFY23CAP**

**IIJA Section 40106 – Transmission Facilitation Program**

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## General Announcement

The Infrastructure Investment and Jobs Act (IIJA or the Act), Public Law 117-58, codified at 42 U.S.C. 18713, directs the Secretary of Energy (Secretary) to establish a program, to be known as the “Transmission Facilitation Program” or “TFP,” under which the Department of Energy (DOE or the Department) may facilitate the construction, replacement, or capacity upgrade of certain eligible electric power transmission lines and related facilities (Eligible Projects). The goals of the TFP program are to facilitate the construction of transmission infrastructure and technologies that improve and enhance the capacity, efficiency, resiliency, or reliability of the electric power transmission system and improve and enhance access to low cost and low carbon energy resources while ensuring repayment of TFP support.

DOE can offer three types of support under TFP to facilitate construction of Eligible Projects: capacity contracts (which provide a commercial source of revenue), loans (providing debt support), and public private partnerships (providing equity support). This Request for Proposals (RFP) specifically solicits applications for capacity contracts (Applications) through a two-part application, screening, and in-depth review process to support the TFP program goals to accelerate the development and construction of high voltage transmission lines that to the maximum extent practicable advance the priorities set forth in 42 U.S.C. 18173(j)(8).

Announcements for public private partnerships, loans, and opportunities to connect an isolated microgrid to an existing transmission, transportation, or telecommunications infrastructure corridor located in Alaska, Hawaii, or a territory of the United States will be offered in future solicitations.

Part 1 of the Application requires applicants to provide information describing how the proposed project will satisfy key statutory criteria to allow the Department to initially screen Applicants and determine which projects to invite to submit a more in-depth Part 2 application. Based on the Part 2 Application evaluation, DOE will invite a limited number of projects into a due diligence phase and to negotiate a binding agreement in connection with the selection of projects for award of a capacity contract.

In accordance with 42 U.S.C 18713(c)(2), this RFP establishes the procedures for solicitation and review of applications for capacity contracts under the TFP and for evaluation of applications consistent with those procedures. The Department is inviting entities that are pursuing potential Eligible Projects (Eligible Entities) and that forecast a start of construction date no later than December 31, 2027, to apply for capacity contract support pursuant to this RFP.

## Key RFP Dates

<b>RFP Issue Date</b>	November 18, 2022
<b>Informational Webinar</b>	November 30, 2022

<b>Submission Deadline for Part 1</b>	February 1, 2023 5:00pm ET
<b>Submission Deadline for Part 2</b>	45 days from invitation to apply 5:00pm ET
<b>Expected Date for DOE Selection Notification, Conduct of Due Diligence, and Contract Execution</b>	Summer of 2023

Applicants must submit their Part I Application by 5:00pm ET on the due date listed above to be eligible for consideration to be invited into Part II.

To apply to this RFP, applicants must be registered in the System for Award Management (SAM) and email the application to [transmissionfacilitation@hq.doe.gov](mailto:transmissionfacilitation@hq.doe.gov).

Any questions on this Announcement and RFP should be submitted to [transmissionfacilitation@hq.doe.gov](mailto:transmissionfacilitation@hq.doe.gov).

## I. Background and Context

### a. Purpose of Program

A resilient, reliable, and expanding transmission system is critical to meeting the Nation's current and future economic, energy, and national security needs. Upgrading and expanding the current transmission system will enhance grid reliability and resilience, and enable cost-effective access to low-carbon lower-cost energy.

To help meet this need, Congress enacted, and President Biden signed the IIJA. The IIJA provides new authorities, appropriations, and borrowing authority, including the TFP, that the Department can use to help reduce financing challenges transmission project sponsors face and to help catalyze investment in transmission. The TFP authorizes three forms of facilitation – capacity contracts, loans, and public-private partnerships – with the goal of assisting eligible entities in the construction of new, replacement, and upgraded high-capacity transmission lines.

DOE intends to employ these tools to support Eligible Projects that demonstrate a need for the facilitation provided by the TFP; provide a reasonable prospect of repayment to the Federal Government; and meet the statute's articulated goals. The Department is authorized to borrow from the Treasury up to \$2.5 billion for the purpose of carrying out the TFP. Amounts borrowed by DOE, together with all amounts received by DOE as receipts, collections, and recoveries relating to the Eligible Projects supported under the TFP (including, for example, capacity contract marketing receipts, loan repayments, and transmission service revenue under a public-private partnership) and any additional amounts appropriated for the program, will be placed in a revolving fund, the Transmission Facilitation Fund, for the purpose of carrying out the TFP.<sup>1</sup> By replenishing the Transmission Facilitation Fund with receipts, collections, and recoveries from Eligible Projects supported by the TFP, the Department anticipates having funds to carry out program activities on an ongoing basis.

The Department is seeking to support projects that optimize the use of the available TFP funds to accelerate the deployment of transmission facilities that will best serve the national interest by cost-effectively increasing resiliency and reliability, reducing energy bills for households and businesses by increasing access to lower-cost electricity, increasing inter-regional transmission capacity, reducing greenhouse gas emissions, and promoting economic growth and energy justice.<sup>2</sup>

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<sup>1</sup> 42 U.S.C. 18713(d).

<sup>2</sup> DOE defines energy justice as “the goal of achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on those disproportionately harmed by the energy system.” (<https://www.energy.gov/diversity/articles/how-energy-justice-presidential-initiatives-and-executive-orders-shape-equity>)

It is critical that the projects not only contribute to these goals, but also (1) support the IJIA objectives to invest in America's workforce by including specific elements to accelerate job growth and job quality; and (2) advance the Administration's equity, environmental, and energy justice priorities, including the Justice40 Initiative<sup>3</sup>. In addition, it is critical that projects supported by these investments will have minimal negative impacts on communities with environmental justice concerns.

Please note that the Department offers other transmission support solutions in addition to the TFP. Interested persons are encouraged to consult the Department's web site or to contact the Grid Deployment Transmission Conductor Program at [transmission@hq.doe.gov](mailto:transmission@hq.doe.gov) for more information on programs administered by the Department, as well as questions concerning the ability to pair different funding opportunities offered by the Department.

### **b. Strategic Goals**

DOE works to provide electricity to everyone, everywhere by maintaining and investing in critical energy facilities to ensure resource adequacy and that all communities have access to reliable, affordable, clean electricity. DOE's Grid Deployment Office (GDO) strategically addresses this goal, with programs in power generation, transmission, and distribution. The TFP is one component of GDO's multi-pronged transmission program.

The IJIA directs the Department to enter into capacity contracts with Eligible Projects that will encourage other entities to enter into contracts for the transmission capacity of the Eligible Projects.<sup>4</sup> This RFP is intended to accelerate the addition of new high-voltage transmission capacity while ensuring repayment of TFP's support. The design of the TFP aims to reduce the risk of project developers responding to market barriers and uncertainties including by helping avoid by under-building or under-sizing transmission facilities in response to potential market barriers and uncertainties despite current and future planning needs for greater transmission capacity. This RFP prioritizes Eligible Projects that have reached advanced development but need committed capacity in order to begin construction and commence commercial operation. Eligible Projects must demonstrate sufficient viability – including system and financial value – to enable DOE to timely recover its costs in a timely manner under TFP; cost recovery will permit DOE to replenish TFP's revolving fund and offer support to additional Eligible Projects.

Within the broader mandate to accelerate the delivery of transmission service additions, the statute directs that TFP prioritize projects that promote the public

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<sup>3</sup> The Justice40 Initiative, established by Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, establishes a goal that 40% of the overall benefits of certain federal investments flow to disadvantaged communities. <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>

<sup>4</sup> 42 U.S.C. 18713(f)(1).

interest by delivering beneficial grid outcomes to the maximum extent practical, specifically projects that use technologies that improve capacity, efficiency, resiliency, or reliability of the bulk electric system; otherwise improve the resilience and reliability of the system; facilitate interregional transfer capacity that promotes economic growth; and contribute to national or subnational goals to lower electricity sector greenhouse gas emissions.<sup>5</sup>

Increasing grid reliability and resilience provides notable benefits such as reducing outages resulting from extreme events and other system disruptions, reducing restoration times from such outages, and reducing risks to health and safety of affected communities.

In keeping with the Administration's goals, and as a federal agency whose mission includes strengthening our Nation's energy prosperity, DOE seeks Eligible Projects that not only contribute to the country's energy technology and climate goals, but also promote the following goals: (1) create good paying, high quality, local jobs; (2) advance diversity, equity, inclusion, and accessibility for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, (3) support meaningful community and labor engagement; and (4) contribute to the goal that 40% of the overall benefits flow to disadvantaged communities (the Justice40 Initiative). Additional detail may be found in Appendix C of this RFP or at <https://www.energy.gov/bil/community-benefits-plan-frequently-asked-questions-faqs>.

### **c. Response to NOI Comments**

On May 10, 2022, DOE issued a Notice of Intent and Request for Information seeking input on the TFP program.<sup>6</sup> DOE received a wide range of comments that inform this RFP. The Department has chosen to focus on capacity contracts in this first RFP. As some commenters observed, the capacity contract vehicle is a form of support for transmission projects that is unique to the TFP. Loans and public-private partnerships, which will be offered in future TFP RFPs, are already available in various forms from other DOE programs. DOE has determined to limit eligibility for this RFP to projects deemed likely to begin construction by December 31, 2027, in order to achieve tangible near term results under the TFP. Commenters noted that focusing capacity contracts on assisting late-stage projects that need subscribers (but that would likely be able to secure financing and attract other customers with a contract commitment from a credit quality entity like the Department) could play a key role in accelerating significant transmission expansion projects. Future RFP announcements for the TFP program will provide opportunities for projects other than the late-stage projects described above that may be interested in public private

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<sup>5</sup> 42 U.S.C. 18713(j)(8).

<sup>6</sup> 87 FR 29142 (2022).

partnerships or loans, in addition to capacity contracts.

A number of commenters expressed a concern that a transmission project undertaken in an organized transmission market cannot benefit from a capacity contract under the TFP. Those commenters explained that, with respect to transmission projects undertaken in their control areas, their market structures do not rely primarily on contract path rights and contract revenues as contemplated by a TFP capacity contract, but instead transmission service is primarily provided as network service where load pays for and can utilize the entire transmission network. While the Department is exercising its discretion to move forward with a first round of capacity contracts in this RFP as permitted by the IJA, the Department plans to potentially retain TFP funds to support a second Request for Proposals in 2023 that may include loan and public-private partnership opportunities.

## II. Key Terms and Definitions

The following terms have the meanings set forth below for purposes of this RFP.

- **“Applicant”** means an Eligible Entity that submits an Application.
- **“Application”** means an application for a capacity contract submitted in response to this RFP.
- **“Capacity contract”** means a contract entered into by the Department and an Eligible Entity for the right to the use of the transmission capacity of an Eligible Project
- **“Eligible electric power transmission line”** means an electric power transmission line that is capable of transmitting not less than (a) 1,000 megawatts (MW); or (b) in the case of a project that consists of upgrading an existing transmission line or constructing a new transmission line in an existing transmission, transportation, or telecommunications infrastructure corridor, 500 MW.
- **“Eligible Entity”** means an entity seeking to carry out an Eligible Project. The Eligible Entity must be the entity that submits the Application for TFP support.
- **“Eligible Project”** means a project (including any related facility) (a) to construct a new or replace an existing eligible electric power transmission line; and (b) to increase the transmission capacity of an existing eligible electric power transmission line.
- **“Existing Corridor”** means an existing right-of-way containing transmission, transportation, or telecommunications infrastructure.
- **“Proposed Project”** means a transmission project for which an Application is submitted pursuant to this RFP.
- **“RFP”** means this Request for Proposals.

## III. Application Process

The Department has divided the evaluation into a two-part process to first screen projects for program eligibility before inviting Applicants to engage in more in-depth application and



review. As discussed below, the Application process involves a Part 1 Application that serves as the initial review of applications to assess the Proposed Project's eligibility, the readiness to being construction, the need for TFP support, and the ability for DOE to receive repayment of its investment in facilitation. Proposed Projects that DOE determines score highest in the Part 1 evaluation will be invited to submit a more in-depth Part 2 Application that will evaluate important public interest factors. The Department will communicate to an Applicant if its Proposed Project is not selected to advance to Part 2. An Applicant that is invited to submit a Part 2 Application will be required to demonstrate how its Proposed Project best meets program priorities and why its Proposed Project is the most effective use of TFP's funding.

Successful Part 2 Applicants will be invited into the due diligence process during which DOE intends to validate information provided in the Part 1 and Part 2 Applications and to negotiate a capacity contract and other appropriate award documentation. Subject to completion of due diligence acceptable to DOE and subject to agreement on the terms of a capacity contract and other appropriate award documentation, DOE intends to select one or more Proposed Projects for the award of a capacity contract. DOE reserves the right to make no award pursuant to this RFP.

Recipients of funding under the IJJA must comply with requirements of all applicable Federal, State, and local laws, regulations, DOE policy and guidance, and instructions in this RFP. DOE shall not be bound by oral representations made during the application stage or during any negotiations. No binding commitment, agreement, obligation, or right of any kind may be assumed or enforced by any Applicant against DOE other than in accordance with a duly and validly executed contract. It is a crime to knowingly make false statements to a federal agency. Misrepresentation of material facts may be the basis for denial of an Application for TFP assistance. Penalties upon conviction may include fine and imprisonment. For details, please refer to 18 U.S.C. 1001.

Pursuant to 42 U.S.C 18713(f)(7), the Department's entry into a capacity contract will not be considered a Major Federal Action for which environmental review under the National Environmental Policy Act (NEPA) is required. If any other federal agency is required to conduct an environmental review pursuant to NEPA, an award under this RFP would not supersede or void that requirement.

Applicants must register with the System for Award Management as described in Appendix F.

#### **IV. Part 1 Application**

##### **a. Criteria**

The Department will evaluate the Part 1 Application to determine if the Applicant has provided sufficient evidence for the Department to determine whether the Proposed Project meets the requirements to be an Eligible Project and to make the

certifications required by 42 U.S.C. 18713(i). In Part 1 of the Application process, the Department will assess the criteria listed below.

- Criteria 1: Does the Proposed Project meet the Eligible Project definition as set forth in 42 U.S.C. 18713 (a)(4)?
- Criteria 2: Is the Proposed Project reasonably likely to begin construction no later than December 31, 2027?
- Criteria 3: Is the Proposed Project unlikely to be constructed in as timely a manner or with as much transmission capacity in the absence of federal TFP support, as set forth in 42 U.S.C. 18713 (i)(2)?
- Criteria 4: Is it reasonable to expect that the proceeds from the Proposed Project will be adequate to recover the authorized TFP support as set forth in 42 U.S.C. 18713 (i)(3)(A)?

Applicants are advised to carefully review the checklist in Appendix A and the attestation required in Appendix B to ensure that the Application includes all the requested documentation. If an Application is not complete or information needs clarification, DOE may request the Applicant to provide further information or clarification.

#### **b. Submission Guidance**

In addition to the information requested in Appendix A, the Eligible Entity's response to Part 1 should include a narrative description, with references to supporting documentation and financial calculations, that clearly and in detail explains how the Proposed Project meets the Part 1 criteria. The information will be reviewed and scored based on the weightings shown below in Part 1 Submission Criteria.

- 1. Project Eligibility Information:** In order for the Department to determine if the Proposed Project meets the definition of Eligible Project as set forth in this RFP, please submit the following information:
  - a. Project name
  - b. Does the Applicant propose to construct the Proposed Project in an Existing Corridor? If yes, identify:
    - i. the location of the Existing Corridor,
    - ii. the type of Existing Corridor,
    - iii. the entity or entities that hold the property rights to the Existing Corridor, and
    - iv. the location of the Proposed Project within the Existing Corridor.
  - c. Provide documentation on the facility rating of the Proposed Project consistent with North American Electric Reliability Corporation (NERC) FAC-008-05:
    - i. For a new transmission, transportation, or telecommunications infrastructure corridor, a minimum of 1,000 MW of transmitting

- capacity is required.
      - ii. In an Existing Corridor, a minimum of 500 MW of transmitting capacity is required.
    - d. Does the Proposed Project include any related facilities that are or will be used primarily to generate electric energy?
    - e. Does the Proposed Project include any related facilities that are or will be used in the local distribution of electric energy?
    - f. Does the Proposed Project propose the construction of a new transmission line?
    - g. Does the Proposed Project propose an upgrade of an existing transmission line?
    - h. Affirm the following:
      - i. The Applicant has read and understands this RFP.
      - ii. The Applicant is legally authorized to enter into a capacity contract with the Department and is in good standing with the Department and all other federal agencies and programs.
      - iii. The Applicant is current on payment of all amounts owed to the Federal government.
      - iv. The Proposed Project will be built and operated within the United States or its territories.
      - v. If the answer to any of these questions in subsection (h) is “No,” include a detailed explanation of the circumstances that cause the answer to be “No.”
- 2. Ownership and Management:** Provide a description of ownership and management of the Proposed Project including but not limited to ownership and equity structure, organizational chart, key staff, and any other entities that the Applicant expects to have a material role in the Proposed Project.
- 3. Project Description and Timeliness of Construction:** In order for the Department to conclude if the Proposed Project is likely to commence construction no later than December 31, 2027, as set forth in Part 1 – Criteria 2 of this RFP, DOE requests that Applicants provide a description of the nature and scope of the Proposed Project, including project costs, the extent to which contractors have or have not been engaged, the technologies used, sites, route, environmental resources affected, system integration status, design features, key metrics, pending litigation, status of regulatory proceedings and regulatory approvals, permits, and licenses obtained and required, and key milestones with dates as outlined in Appendix A. This narrative should also address the following: (i) the readiness of the Proposed Project to receive delivery of major components and equipment; (ii) the extent to which definitive interconnection agreements have been finalized and executed; (iii) the extent to which all necessary land rights and state and local permits, as well as the environmental clearance necessary to proceed, have been obtained or approved or if not, the status of such rights,

permits, and clearances, and a description of any obstacles to securing them; (vi) risk and mitigation plans associated with securing financing and commercial commitments needed to begin construction, including cost risk; (vii) the timeframe required to achieve all milestones and conditions to begin construction by December 31, 2027; and (viii) any pending litigation that would put at risk the Proposed Project's project plan. Applications that do not adequately demonstrate readiness to construct before December 31, 2027, will not receive further consideration.

- 4. Need for the DOE Capacity Contract:** To assist in scoring Part 1 - Criteria 3 of this RFP, DOE requests that Applicants provide the following information:
- a. An explanation of why the Proposed Project is unlikely to be built, or unlikely to be built with as much transmission capacity or in as timely a manner, absent the DOE capacity contract.
  - b. A description of how the Applicant believes the DOE capacity contract would encourage other entities to enter into capacity contracts for the Proposed Project and mitigate or eliminate the financing or cost recovery barriers to begin construction of the Proposed Project. The Applicant should demonstrate how a capacity contract awarded under the TFP would accelerate commencement of construction, or how a capacity contract awarded under the TFP would enable the Proposed Project to be built with more capacity than currently planned, and a description of how the Applicant believes a contract capacity awarded under the TFP would address any other barriers to commencement of construction or expansion of the Eligible Project.
  - c. An estimate of the length of time after commencement of commercial operation that the Applicant expects DOE would need to maintain its position under a capacity contract and the means through which DOE will recover its costs over the life of its capacity contract, including the expected value of the DOE capacity contract at the time of exit.
- 5. Reasonableness for Repayment of DOE's TFP Support:** To assist in scoring Part 1 – Criteria 4 of this RFP, Applicants are requested to provide both a narrative description and preliminary quantitative data identified in Appendix A describing the anticipated market conditions that will allow Department to expeditiously market, transfer, or relinquish its contracted transmission capacity sufficient to recover its costs under the capacity contract. Pursuant to the IJJA, the Department is required to seek to terminate a capacity contract as soon as practicable after determining that sufficient transmission capacity of the Eligible Project has been secured by other entities to ensure the long-term financial viability of the Eligible Project.<sup>7</sup> The Department will seek to transfer capacity to

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<sup>7</sup> 42 U.S.C. 18713(f)(5). Where the context so indicates, the terms "transfer" and "relinquish" as used in this RFP refer to those terms as they are used in 42 U.S.C. 18713(f)(5). Where the context so indicates, the terms "market"

a third party or relinquish the capacity to the owner of an Eligible Project, in either event in exchange for payment of an amount sufficient to recover any remaining costs incurred by the Department under the capacity contract. An Applicant that can qualitatively and quantitatively demonstrate in their response a faster recovery of DOE's remaining costs under a capacity contract will be scored more favorably than an Applicant that cannot.

To support the evaluation of Part 1 - Criteria 4, Applicants are directed to provide information regarding:

- a. An assessment of existing and new generation that is likely to access the Proposed Project in terms of generation type, capacity, capacity factor, and timing.
- b. Describe each sponsor's and principal's equity investment in the Proposed Project.
- c. Describe expected sources of debt and any debt arrangements that have already been completed.
  - i. Describe the status of in-process debt negotiations.
  - ii. Identify the amount of debt that will be provided by sponsors or principals, or their parent companies.
- d. Describe annual revenues and credits from non-TFP government sources:
  - i. Other federal support, such as grants or loan guarantees from federal agencies or entities, including DOE, and contracts with federal agencies or entities, that support or relate to the Proposed Project. Include information on the status of applications and commitments for these sources.
  - ii. Other non-federal governmental (including state and local) incentives or other assistance on which the Proposed Project relies, including grants, tax credits and loan guarantees to support the financing, construction, and operation of the Proposed Project.
- e. Anticipated rate authority: market or negotiated.
- f. Annual revenues from committed transmission subscribers:
  - i. Describe commitments from transmission customers for the electric power to be transmitted by the Proposed Project. This information should include the amount of capacity currently subscribed, list of subscribers or sales agreements and the revenue stream expected from each subscriber over the life of the Proposed Project.
  - ii. Estimated revenues from customers reasonably expected to contract for transmission capacity from the Proposed Project.

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or "marketing" as used in this RFP refer to the marketing of transmission capacity of an Eligible Project in accordance with 42 U.S.C. 18713(f)(4).

- g. Actions taken and additional plans to market the unsold transmission capacity of the Proposed Project.
- h. Available mechanisms to market, transfer, or relinquish DOE's capacity interests, likely customers for that interest, and the likely process for valuing DOE's interest at the time of exit.
- i. The frequency and timing for when capacity charges will be assessed to the capacity holders. To the extent capacity holders are required to advance-fund a portion of their capacity contracts during construction, custodial or escrow options for the advance proceeds.
- j. Copies of resource assessments and market reports that provide the bases for the assumptions and estimates in the modeling.
- k. Applicants are required to submit modeling demonstrating that there is a reasonable expectation that (a) demand for transmission capacity will be sufficient to support the financial viability of the Proposed Project and (b) DOE will be able to market, transfer, or relinquish its capacity from the Proposed Project on terms sufficient for DOE to recover the costs it incurred over the life of the capacity contract.
- l. Pro forma financial statements covering the period from project development through final maturity of the Proposed Project. The model should include balance sheet, profit and loss, source and application of funds statements, and debt service ratios.

**6. Proposed Capacity Contract Term Sheet:** The Applicant should include in their Part 1 Application a draft term sheet addressing the provisions the Applicant proposes to include in a capacity contract to be awarded under the TFP. Applicants should identify any related or ancillary agreements they anticipate may be required in connection with a capacity contract. Under the IJJA, a capacity contract can be for a term of not more than 40 years and can be for not more than 50% of the total proposed capacity of an Eligible Project.<sup>8</sup> Applicants should be mindful that the limitations set forth in the statute are the outside boundary for term and volume. The Department will favor term sheets that offer shorter terms representing a smaller percentage of total capacity of a Proposed Project, all else being equal, so that the Department can limit its financial obligation under any single capacity contract and support the addition of more transmission capacity over time.<sup>9</sup> The term sheet is indicative only and is intended to provide the Department with an understanding of key terms and conditions that the Applicant anticipates requiring for the capacity contract. Consistent with the statute, rates for service being offered to the Department must be at the fair market value for the use of the transmission capacity, as

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<sup>8</sup> 42 U.S.C. 18713(f)(3)(A) and (B).

<sup>9</sup> For purposes of appropriations accounting, the Department must record as an obligation the total cost to the Department for transmission capacity for the full term of a capacity contract at the time it enters into a binding commitment for the transmission capacity, without regard to when payments actually commence under the capacity contract.

determined by the Secretary, taking into account, as the Secretary determines to be necessary, the comparable value for the use of the transmission capacity of other electric power transmission lines.<sup>10</sup>

The proposed term sheet should include, at a minimum:

- a. The term of the contract (including date of execution, commercial operation date, and contract end date);
- b. The amount of transmission capacity rights the Applicant proposes DOE would commit to under the capacity contract;
- c. Indicative rate model and proposed rate to DOE, with supporting data and assumptions;
- d. Conditions precedent and milestones to ensure expeditious progress of the Proposed Project to commercial operation and the terms under which DOE may terminate a capacity contract for failure of the Proposed Project to satisfy a condition precedent or achieve a milestone;
- e. Option for short-term commitments (less than 10 years) with renewal rights;
- f. The proposed timing and method to market, transfer, or relinquish the capacity under DOE's capacity contract, including a commitment to offer DOE's rights to new customers on a pro rata basis with unsubscribed capacity. DOE encourages Applicants to be creative in proposing terms that enable DOE to market, transfer, or relinquish its capacity contract with the Proposed Project such that DOE can recover its costs and re-deploy TFP funding to support other transmission projects;
- g. Any ancillary agreement, such as a precedent agreement, facilitation agreement, or other instrument that the Applicant proposes as necessary or desirable to facilitate the TFP capacity contract.

### **c. Summary of Application Evaluation Process for Part 1**

DOE will review each Part 1 submission to determine whether the submission is responsive to the requirements of this RFP. DOE's Part 1 evaluation will first verify that an Application meets the Eligible Project requirements set forth in 42 U.S.C. 18713(a)(4) and provides enough information for DOE to conclude the Proposed Project is likely to begin construction no later than December 31, 2027. Applicants that fail to meet the Part 1 criteria will not receive further consideration under the RFP. Applicants that have met the requirements set forth in 42 U.S.C. 18713(a)(4) and have shown the Proposed Project is likely to begin construction by December 31, 2027, will be scored based on the Part 1 Submission Criteria set forth below. Proposed Projects that DOE determines score highest will be invited to submit a Part 2 Application. DOE will determine how many Proposed Projects to include in the Part 2 Application process based on the relative strength of Proposed Projects under the Part 1 criteria and the level of requested funding under the proposed capacity

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<sup>10</sup> 42 U.S.C. 18713(f)(2).

contracts.

<b>Part 1 Submission Criteria</b>	<b>Scoring Consideration of Submitted Material</b>	<b>Weight</b>
42 U.S.C. 18713(i)(2) – unlikely to be constructed in as timely a manner or with as much transmission capacity in the absence of the capacity contract	<p>Applicants that can clearly demonstrate how TFP allows them to achieve one or more of the following will score better: overcoming financial barriers, obtaining customers, improving cost competitiveness, acceleration of construction start, increase in capacity, contractor engagement, and acquisition of critical material.</p> <p>Failure to demonstrate need as required in 42 U.S.C. 18713(i)(2) will result in a score of zero.</p>	50%
42 U.S.C. 18713(i)(3)(A) – reasonable to expect that DOE’s proceeds from the Eligible Project will be adequate to recover the cost of the capacity contract	<p>Applicants that can clearly demonstrate with limited uncertainty expected market conditions that allow DOE to market, transfer, or relinquish the capacity contract quickly without a financial loss will score higher.</p> <p>Failure to demonstrate recovery as required in 42 U.S.C. 18713(i)(3)(A) will result in a score of zero.</p>	50%

## V. Part 2 Application

### a. Criteria

If an Applicant is invited to participate in Part 2, it will be required to provide the information described below and set forth in Appendix C. The penalty of perjury statement in Appendix D must be included in the Applicant’s Part 2 Application. If an Application is not complete or information needs clarification, DOE may request the Applicant to provide further information or clarification.

The Department will specifically assess in Part 2 the degree to which a Proposed



Project serves the public interest.<sup>11</sup> In order to determine whether a Proposed Project serves the public interest, the Department will evaluate each Proposed Project based on the criteria listed below under the Public Interest Factors – Statutory Priorities and the Public Interest Factors – Policy Priorities. In addition, Applicants will be required to update information provided in Part 1 and submit an Independent Market Report as described in further detail below.

#### **b. Submission Guidance**

In addition to the information requested in Appendix C, the Eligible Entity's response to Part 2 should include a narrative description, with references to supporting documentation and financial calculations where requested, that clearly and in detail identifies how the Proposed Project meets the Part 2 criteria.

The Applicant is required to update the information provided in Part 1 by revising the information previously submitted as necessary to reflect the information contained in the Independent Market Report and any other new information that affects the evaluation of the Proposed Project.

#### **1. Public Interest Factors - Statutory Priorities**

The IJA directs the Secretary to prioritize Eligible Projects based on the following factors: (a) the use by the Eligible Project of technology that enhances the capacity, efficiency, resiliency, or reliability of an electric power transmission system; (b) improvement of the resiliency and reliability of an electric power transmission system as a result of the Eligible Project; (c) facilitation by the Eligible Project of interregional transfer capacity that supports strong and equitable economic growth; and (d) contribution by the Eligible Project to national or subnational goals to lower electricity sector greenhouse gas emissions.<sup>12</sup> Accordingly, Applicants should provide the information outlined below demonstrating to what measurable extent the Proposed Project addresses these priorities. The Department understands that a Proposed Project may advance and achieve multiple priorities.

- a. Part 2 – Criteria 1: Narrative and technical description demonstrating how the use of technology by the Proposed Project will enhance the capacity, efficiency, resiliency, or reliability of an electric power transmission system, including reconductoring of an existing electric power transmission line with advanced conductors, and use of hardware or software that enables dynamic line ratings, advanced power flow control, or grid topology optimization as set forth in 42 U.S.C.

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<sup>11</sup> 42 U.S.C. 18713(i)(1).

<sup>12</sup> 42 U.S.C. 18713(j)(8),).

18713(j)(8)(A).

- b. Part 2 – Criteria 2: Analysis demonstrating how completion of the Proposed Project will improve the resiliency and reliability of an electric power transmission system (42 U.S.C. 18713(j)(8)(B)) and that the Proposed Project would not adversely impact system reliability or operations in the control area in which it will be interconnected. This analysis should address one or more of the following:
  - i. The Proposed Project’s usefulness in offsetting the impacts of weather and climate-driven events such as drought (delivery to areas that are dependent on hydropower subject to drought), wildfires (delivery to areas that reduce reliance on wildfire-susceptible infrastructure), extreme weather (e.g., temperature extremes and storms).
  - ii. The Proposed Project’s contribution to storm-hardening.
  - iii. The Proposed Project’s value in addressing one or more needs or otherwise addressing a vulnerability identified in NERC’s Long Term Reliability Assessment.
  - iv. The Proposed Project’s usefulness in supporting black start of one or more regions of the grid as a “cranking path.”
  - v. The Proposed Project’s usefulness in reducing susceptibility to low probability, high impact events, such as geomagnetic disturbance.
  - vi. The Proposed Project’s ability to enable ancillary services and other reliability support (e.g., reactive power support, frequency response, load following).
- c. Part 2 – Criteria 3: Quantitative and qualitative analysis demonstrating that the Proposed Project will facilitate interregional transfer capacity that supports strong and equitable economic growth as set forth in 42 U.S.C. 18713(j)(8)(C). DOE will consult with the relevant transmission planning regions in this area.
- d. Part 2 – Criteria 4: Quantitative and qualitative analysis demonstrating that the Proposed Project will contribute to national or subnational goals to lower electricity sector greenhouse gas emissions as set forth in 42 U.S.C. 18713(j)(8)(D), including a reduction in emissions in the load centers that will receive the electricity transmitted by the Proposed Project.

## **2. Public Interest Factors – Policy Priorities**

- a. Part 2 – Criteria 5: Community Benefits Plan: Job Quality and Equity. Each Applicant is required to provide a Community Benefits Plan setting

forth the Applicant’s approach to ensuring that the Proposed Project advances the following four goals: 1) community and labor engagement; 2) investing in the American workforce; 3) advancing diversity, equity, inclusion, and accessibility (DEIA); and 4) contributing to the Justice40 Initiative. The Department will consider the factors set forth below and in Appendix C when evaluating the Community Benefits Plan.

#### Overall Approach

- The extent to which the Applicant’s Community Benefits Plan illustrates project viability and social risk mitigation through community and labor engagement; investment in the American workforce; DEIA; and “Justice40 Initiative” benefits to disadvantaged communities.
- The extent the actions outlined in the Community Benefits Plan are supported by existing Workforce and Community Agreements (e.g., good neighbor agreements, workforce agreements, project labor agreements, collective bargaining agreements, and similar agreements).

#### Community and Labor Engagement

- Extent to which the Applicant demonstrates community and labor engagement to date and a clear and appropriately robust plan to engage local stakeholders, including labor unions and community-based organizations that support or work with disadvantaged communities.
- The extent to which the Applicant’s Community Benefits Plan illustrates project viability and social risk mitigation through the delivery of high-quality jobs, minimal environmental impact, and flow of project benefits to disadvantaged communities.

#### Job Quality

- Extent to which the Community Benefits Plan demonstrates that the jobs supported by the proposed project will be quality jobs and provides a robust and credible plan to attract, train, and retain skilled workers. The following bullets include examples of how this could be demonstrated:
  - Collective bargaining agreement, project labor agreement, labor management partnership, labor peace or labor neutrality agreement, or similar agreement or commitment to workers’ free and fair choice to join a union or labor organization of their choosing; and
  - Commitments to fair wages, benefits, or other worker support, including education and training and worker engagement in workplace safety and health plans.

Diversity, Equity, Inclusion, and Accessibility

- Extent to which the Community Benefits Plan includes specific and high-quality actions to meet DEIA goals, which may include DEIA recruitment procedures; partnerships with workforce training or support organizations serving workers facing systematic barriers to employment; and other DEIA commitments.

Justice40 Initiative

- Extent to which the Community Benefits Plan identifies specific, measurable benefits for disadvantaged communities, how the benefits will flow to disadvantaged communities, and how negative environmental impacts affecting disadvantaged communities would be mitigated; and
- Extent to which the Proposed Project would contribute to meeting the objective that 40% of the benefits of certain climate and clean energy investments flow to disadvantaged communities.

**3. Independent Market Report and updated Part 1 information**

**a. Independent Market Report**

In Part 2, the Department will require the Applicant to provide an Independent Market Report prepared by a qualified, independent third party. The Independent Market Report should provide an assessment of whether and when the Proposed Project will be fully subscribed and the likelihood that DOE will recover its costs under the proposed capacity contract through marketing, transfer, and relinquishment. The Department will consider the Independent Market Report in evaluating the Proposed Project under the criteria contained in this RFP. As set forth below and in Appendix C, the Independent Market Report should include the following:

- i. The assumptions used in the analysis and modeling that support the Independent Market Report;
- ii. Market issues the Proposed Project is intended to address (such as additional supply of electricity or carbon pollution-free electricity, enhanced reliability or resiliency), and a description of competing efforts to solve the same or related issues;
- iii. Existing and new generation that is likely to access the Proposed Project in terms of generation type, capacity, capacity factor, and timing;
- iv. Expected delivered cost of electricity associated with the Proposed Project for its target market over the life of the Proposed Project and the competitiveness of those costs relative to other transmission and generation projects;

- v. The load likely to purchase the electricity delivered by the Proposed Project and the factors expected to drive usage of the Proposed Project (such as renewable energy requirements, load growth, generation retirements and additions, reliability and resiliency objectives);
- vi. Projections of future regional electricity supply and prices and the conditions likely to drive demand and prices;
- vii. An assessment of how the Proposed Project will affect economic growth in its footprint and in its target market; and
- viii. An assessment of market conditions that would affect DOE's ability to market, transfer, or relinquish its transmission capacity, the costs that DOE would be able to recover in connection with marketing, transferring, or relinquishing its transmission capacity, and means to mitigate DOE's associated risks.

**b. Updated Information Provided in Part 1**

As part of its Part 2 Application, the Applicant is required to validate the information provided in Part 1 as follows:

- i. Provide an Independent Engineer's Report that includes analysis and recommendations in the following areas:
  - a) Base technology readiness for deployment, including previous commercial or pre-commercial demonstration;
  - b) Engineering and design approach, including engineering risks and mitigations;
  - c) Proposed management team;
  - d) Engineering, procurement, and construction contracting strategy;
  - e) Interconnection plans;
  - f) Integrated project schedule, including the schedule for completion;
  - g) Cost estimates and technical input to the financial model;
  - h) Contractual requirements and arrangements;
  - i) Project construction and operating risks, including mitigation activities and milestones;
  - j) Direct labor requirements during construction and operation;
  - k) Siting and permitting;
  - l) Testing and commissioning;
  - m) Operation and maintenance;
  - n) Waste disposal plan;
  - o) Estimate of the number of construction jobs and permanent jobs expected to be created or retained in the United States; and
  - p) Systems Integration:
    - i. Evidence that the Proposed Project is not duplicative of the functions of existing or planned transmission lines;
    - ii. Information demonstrating that the Proposed Project is

- consistent with regional transmission plans and priorities;
    - iii. Evidence that the Proposed Project aligns with the needs assessment performed by the regional transmission entities, and how the Proposed Project will be integrated into the grid.
  - ii. Update the information submitted in the Part 1 Application as necessary to reflect the information contained in the Independent Market Report and any other new information that affects the evaluation of the Proposed Project. All modeling results should be updated to be consistent with the new information and the Independent Market Report.

**c. Summary of Application Evaluation Process for Part 2**

The information described above in Submission Guidance will be evaluated and used to assess, score, and rank Applications in Part 2 as follows:

<b>Public Interest Factors</b>	<b>Scoring Consideration</b>	<b>Weight</b>
<p>42 U.S.C. 18713(j)(8)– Secretary shall prioritize projects that to the maximum extent practicable: use technology that enhances the capacity, efficiency, resiliency, or reliability of an electric power transmission system; will improve the resiliency and reliability of an electric power transmission system; facilitate interregional transfer capacity that supports strong and equitable</p>	<p>An Applicant that can clearly demonstrate how the Proposed Project meets each of the prioritization factors will receive higher scores.</p> <p>A Proposed Project that fails to satisfy this public interest criteria will receive a score of zero.</p>	<p>80%</p>

economic growth; contribute to national or subnational goals to lower electricity sector greenhouse gas emissions.		
Community Benefits Plan	<p>An Applicant that provides a Community Benefits Plan that addresses and advances all of the four goals will be scored more highly: 1) community and labor engagement; 2) investing in the American workforce; 3) advancing DEIA; and 4) contributing to the Justice40 Initiative.</p> <p>A Proposed Project that fails to satisfy this public interest criteria will receive a score of zero.</p>	20%

After completing the Part 2 Application evaluation, DOE will review again the summary scores from Part 1, any additional information that DOE may request during its review, and updated information provided in Part 1 to complete an aggregate score.

The following table summarizes the weightings for each of the factors to be considered in determining a final aggregate score for each Proposed Project that completes the Part 2 Application:

<b>Final Review Criteria</b>	<b>Weight</b>
Part 2 Public Interest Factors	33%
Updated Part 1 Submission Criteria - Unlikely to be constructed in as timely a manner or with as much transmission capacity in the absence of facilitation	33%

under this section (42 U.S.C. 18713(i)(2))	
Updated Part 1 Submission Criteria - Reasonable to expect that the proceeds from the Eligible Project will be adequate to recover the cost under the capacity contract (42 U.S.C. 18713(i)(3)(A))	34%

In addition to the final review criteria set forth above, the Department may take into account the following additional policy factors in determining which Applicants to invite to the due diligence phase:

- The degree to which the Proposed Project optimizes the use of available TFP funding;
- The degree to which the Proposed Project will deliver the greatest benefits for the least amount of TFP funding;
- The degree to which the Proposed Project, or group of Proposed Projects, represents a geographic distribution;
- The degree to which the Proposed Project’s solution or strategy will be replicable or otherwise maximize deployment of additional transmission capacity, system resilience and reliability, other priorities;
- The degree to which the Proposed Project leverages existing infrastructure, facilities, and/or workforce skills; and
- The degree to which the Applicant will employ procurement of U.S. iron, steel, manufactured products, and construction materials in the Proposed Project. Although the Build America, Buy America requirements found in Title IX of IJJA do not apply to this RFP since Applicants are expected to be for-profit entities and the TFP capacity contract is a commercial transaction and not a financial assistance award, Appendix E provides further information on Build America Buy, America requirements that includes helpful information regarding what constitutes U.S. iron, steel, manufactured products, and construction materials.<sup>13</sup>

## **VI. Due Diligence and Facilitation Agreement**

### **a. Due Diligence**

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<sup>13</sup> See Office of Management and Budget Memorandum M-22-1 at 2-4 (April 18, 2022).



Based on its evaluation of Applications at the conclusion of Part 2, DOE will invite Applicants to participate in the due diligence phase of the selection process. In the due diligence phase, DOE will conduct due diligence on a participating Proposed Project to confirm that the Proposed Project meets the criteria on which it has been evaluated. Due diligence will include DOE consulting with regional planning entities and states, assessing financial modeling and marketing reports, and validating all information submitted by the Applicant through the use of outside experts.

During the due diligence phase, DOE will negotiate the terms of the facilitation agreement with a participating Applicant. The facilitation agreement will describe the events and actions that must occur before the capacity contract takes effect and the terms and rate under which DOE will enter into the capacity contract. The facilitation agreement will include terms such as:

- Conditions precedent to the execution of the capacity contract, which will include conditions related to the Proposed Project's financing, commencement of construction, commercial operation, and receipt of regulatory approvals;
- Appropriate milestones to demonstrate measurable progress of the Proposed Project to commercial operation, and remedies if a milestone is not achieved;
- Performance of the Community Benefits Plan;
- Domestic content commitments made by the Applicant with respect to the procurement of U.S. iron, steel, manufactured products, and construction materials for the Proposed Project, including circumstances in which the Applicant may seek waiver of its domestic content commitment; and
- Provisions governing the sale of capacity to third parties prior to the Proposed Project's commercial operation and DOE's rights in connection with third party capacity sales.

#### **b. Capacity Contract**

The capacity contract will be consistent with the Applicant's Open Access Transmission Tariff or equivalent and must be in compliance with any applicable requirements of the Federal Power Act and any regulations thereunder. The capacity contract will specify the contract capacity, scheduling rights, rate, and term of capacity commitment. Any rate charged under the capacity contract must represent the fair market value for the use of the transmission capacity, as determined by the Department.<sup>14</sup>

#### **c. Cost Recovery**

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<sup>14</sup> 42 U.S.C. 18713(f)(2)(a).

The IJIA authorizes DOE to recover its cost of facilitation activities carried out in entering into a capacity contract.<sup>15</sup> As a condition for the Applicant's participation in the due diligence phase, DOE may require the Applicant to enter into a cost reimbursement agreement to reimburse DOE for its third party legal and consulting services costs incurred in the due diligence phase and for contract negotiation.

## VII. Restrictions on Disclosure and Use of Information

Confidential business information shared with DOE is subject to Federal laws, regulations, and DOE policies. As a matter of policy, the TFP program and its federal employees do not enter into confidentiality agreements. Application materials may become federal records and subject to disclosure statutes such as the Freedom of Information Act. To the extent practicable, DOE will protect confidential business information from public release. Patentable ideas, trade secrets, proprietary and confidential commercial or financial information, disclosure of which may harm the Applicant, should be included in an Application only to the extent that such information is necessary to convey an understanding of the Proposed Project. The use and disclosure of such information will be restricted, to the extent consistent with applicable law, provided the Applicant specifically identifies and marks such data as described below:

1. Upload the following legend on a separate page when submitting an Application (be sure to specify the section number(s) from the Application that contain(s) such data): "Applicant submits this application based on DOE's assurance that the application will be kept confidential to the extent consistent with applicable law. Applicant hereby certifies that Section(s) [\_\_\_\_] of this application contain(s) trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with the agreement with DOE, if any, entered in response to this application. If Applicant executes a capacity contract because of, or in connection with, the submission of this application, DOE shall have the right to use or disclose the data contained herein, other than such data that have been properly declared to be trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure."
2. Include the following legend on the first or cover page of each document or electronic file submitted that contains such data (be sure to specify the page numbers from the document or electronic file that contains such data): "Notice of Restriction on Disclosure and Use of Data - Pages [\_\_\_\_] of this document contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a capacity contract between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or

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<sup>15</sup> 42 U.S.C. 18713(d)(4)(a)(i).

otherwise restricted, regardless of source.”

3. Include the following legend on each page containing trade secrets or commercial or financial information that is privileged or confidential: “Contains trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure.”
4. In addition, each line or paragraph containing trade secrets or commercial or financial information that is privileged or confidential should be marked with brackets or other clear identification, such as highlighting. For more guidance regarding the treatment of confidential information, please refer to DOE’s regulations implementing the Freedom of Information Act (10 CFR 1004).

### Appendix A: TFP Part 1 Application and Bid Submission Checklist

<p><b>1. Project Eligibility Information (Maximum 5 pages of text).</b> In order for the Department to determine if the Proposed Project meets the definition of the Eligible Project as set forth in 42 U.S.C. 18713(a)(4), please submit the following information:</p>	<b>Format</b>
<ul style="list-style-type: none"> <li>a. Project name</li> <li>b. Does the Applicant propose to construct the Proposed Project in an Existing Corridor? If yes, identify: <ul style="list-style-type: none"> <li>i. the location of the Existing Corridor,</li> <li>ii. the type of Existing Corridor,</li> <li>iii. the entity or entities that hold the property rights to the Existing Corridor, and</li> <li>iv. location of Proposed Project within the Existing Corridor.</li> </ul> </li> <li>c. Provide documentation on the facility rating of the line consistent with North American Electric Reliability Corporation FAC-008-05: <ul style="list-style-type: none"> <li>i. For a new transmission, transportation, or telecommunications infrastructure corridor, of a minimum of 1,000 MW of transmitting capacity is required.</li> <li>ii. In an Existing Corridor, of a minimum of 500 MW of transmitting capacity is required.</li> </ul> </li> <li>d. Does the Proposed Project include any related facilities that are or will be used primarily to generate electric energy?</li> <li>e. Does the Proposed Project include any related facilities that are or will be used in the local distribution of electric energy?</li> <li>f. Does the Proposed Project propose the construction of a new transmission line?</li> <li>g. Does the Proposed Project propose an upgrade of an existing transmission line?</li> </ul>	PDF
<p><b>2. Ownership and Management (Maximum 5 pages of text, with additional information provided in Appendices).</b> Provide a description of ownership and management of the Proposed Project including but not limited to:</p>	<b>Format</b>
<ul style="list-style-type: none"> <li>a. Ownership and equity structure,</li> <li>b. Organizational chart,</li> <li>c. Key staff, and</li> <li>d. Any other entities that the Applicant expects to have a material role in the Proposed Project.</li> </ul>	PDF
<p><b>3. Timeliness of Construction (Maximum 15 pages of text, with additional information provided in Appendices).</b> Provide a description of the nature and scope of the Proposed Project, including project costs, the extent to which</p>	<b>Format</b>

<p>contractors have or have not been engaged, the technologies used, sites, route, environmental resources affected, system integration status, design features, key metrics, pending litigation, status of regulatory proceedings and regulatory approvals, permits, and licenses obtained and required, and key milestones with dates. Include: (i) the readiness of the Proposed Project to receive delivery of major components and equipment; (ii) the extent to which definitive interconnection agreements have been finalized and executed; (iii) the extent to which all necessary land rights and state and local permits, as well as the environmental clearance necessary to proceed, have been obtained or approved or if not, the status of such rights and permits and any obstacles to securing them; (vi) risk and mitigation plan(s) associated with securing financing and commercial commitments needed to begin construction, including cost risk; (vii) the timeframe required to achieve all milestones and conditions to begin construction by December 31, 2027; and (viii) any pending litigation that would put at risk the Proposed Project's project plan. The plan should include <i>Supporting Factual Documentation and Descriptions</i>, such as:</p>	
<ul style="list-style-type: none"> <li>a. Transmission facilities and related facilities, key design elements, the equipment that will be used to construct the line, its anticipated capacity and voltage ratings, points of interconnection, unidirectional or bidirectional capabilities;</li> <li>b. Technology used in the Proposed Project that enhances the capacity, efficiency, resiliency, or reliability of an electric power system. In particular, the utilization of: <ul style="list-style-type: none"> <li>i. High voltage direct current technology;</li> <li>ii. Advanced conductors;</li> <li>iii. Hardware and/or software that enables dynamic line ratings, advanced power flow control, and grid topology optimization.</li> </ul> </li> <li>c. Project location, including a map showing end points and route of the proposed transmission line that constitutes the Proposed Project;</li> <li>d. On the map and in supporting text, identify land use and property rights necessary for construction and operation of the Proposed Project that the Applicant has in place, and what land use arrangements remain to be completed to successfully undertake construction and operation of the Proposed Project;</li> <li>e. Planning Documents: Key planning documents for the Proposed Project such as equipment procurement plan, construction plan, and risk management plan;</li> <li>f. Project Schedule: Provide the integrated project schedule, including: <ul style="list-style-type: none"> <li>i. Execution of critical path contracts and agreements, such as a Front-end engineering agreement, interconnection agreement, technology license and teaming agreements, contracts for engineering, procurement and construction contract, and other long lead time contracts;</li> </ul> </li> </ul>	PDF

<ul style="list-style-type: none"> <li>ii. Commencement of site preparation and major construction activities;</li> <li>iii. Delivery of key equipment to site;</li> <li>iv. Commencement of testing and commissioning activities; and</li> <li>v. Commercial operation date.</li> </ul> <p>g. Project Costs: Provide the estimated total project costs, and a summary detailing key assumptions and the methodology used to calculate the project costs. Include all eligible costs that you have paid and expect to pay and that are related to the Proposed Project. Also include costs for escalation and contingencies in this calculation;</p> <p>h. Project Execution Risks: Discuss the risks the Proposed Project faces in achieving the expected commercial operation date and sustained operation and provide information on how they are being mitigated. Risks to be considered include, but are not limited to:</p> <ul style="list-style-type: none"> <li>i. Costs;</li> <li>ii. Demand for transmission capacity;</li> <li>iii. Technical design and engineering;</li> <li>iv. Equipment and labor availability;</li> <li>v. Equipment performance;</li> <li>vi. Property and land use rights;</li> <li>vii. Regulatory approvals, licenses, and permits; and</li> <li>viii. Interconnection.</li> </ul>	
<p><b>4. Need for the DOE Capacity Contract (Maximum 15 pages of text, with additional information provided in Appendices).</b> To assist in the scoring of Part 1 - Criteria 3, 42 U.S.C. 18713(i)(2), DOE requests that Applicants provide the following information:</p>	<p><b>Format</b></p>
<ul style="list-style-type: none"> <li>a. An explanation of why the Proposed Project is unlikely to be built, or unlikely to be built with as much transmission capacity or in timely a manner, absent the DOE capacity contract.</li> <li>b. A description of how the Applicant believes the DOE capacity contract would encourage other entities to enter into capacity contracts for the Proposed Project and mitigate or eliminate the financing or cost recovery barriers to begin construction of the Proposed Project. The Applicant should demonstrate how a capacity contract awarded under the TFP would accelerate commencement of construction, or how a capacity contract awarded under the TFP would enable the Proposed Project to be built with more capacity than currently planned, and a description of how the Applicant believes a contract capacity awarded under the TFP would address any other barriers to commencement of construction or expansion of the Proposed Project.</li> <li>c. An estimate of the length of time after commencement of commercial operation that the Applicant expects DOE would need to maintain its position under a capacity contract and the means through which DOE will</li> </ul>	<p>PDF</p>

<p>recover its costs over the life of its capacity contract, including the expected value of the DOE capacity contract at the time of exit.</p>	
<p><b>5. Reasonableness for Repayment of DOE’s TFP Support (Maximum 15 pages of text, with additional information provided in Appendices).</b> An Applicant should qualitatively and quantitatively articulate the market conditions and other factors that would allow DOE to expeditiously market, transfer, or relinquish its contracted transmission capacity sufficient to recover its costs under the capacity contract. Information that should be submitted to corroborate the Applicant’s assertions include:</p>	<p><b>Format</b></p>
<ul style="list-style-type: none"> <li>a. An assessment of existing and new generation that is likely to access the Proposed Project in terms of generation type, capacity, capacity factor, timing.</li> <li>b. Describe each sponsor’s and principal’s equity investment in the Proposed Project.</li> <li>c. Describe expected sources of debt and any debt arrangements that have already been completed. <ul style="list-style-type: none"> <li>i. Describe the status of in-process debt negotiations.</li> <li>ii. Identify the amount of debt that will be provided by sponsors or principals, or their parent companies.</li> </ul> </li> <li>d. Describe annual revenues and credits from non-TFP government sources: <ul style="list-style-type: none"> <li>i. Other federal support, such as grants or loan guarantees from federal agencies or entities, including DOE, and contracts with federal agencies or entities, that support or relate to the Proposed Project. Include information on the status of applications and commitments for these sources.</li> <li>ii. Other non-federal governmental (including state and local) incentives or other assistance on which the Proposed Project relies, including grants, tax credits and loan guarantees to support the financing, construction, and operation of the Proposed Project.</li> </ul> </li> <li>e. Anticipated rate authority: market or negotiated.</li> <li>f. Annual revenues from committed transmission subscribers: <ul style="list-style-type: none"> <li>i. Describe commitments from transmission customers for the electric power to be transmitted by the Proposed Project. This information should include the amount of capacity currently subscribed, list of subscribers or sales agreements and the revenue stream expected from each subscriber over the life of the Proposed Project.</li> <li>ii. Estimated revenues from customers reasonably expected to contract for transmission capacity from the Proposed Project.</li> </ul> </li> <li>g. Actions taken and additional plans to market the unsold transmission capacity of the Proposed Project.</li> <li>h. Available mechanisms to market, transfer, or relinquish DOE’s capacity</li> </ul>	<p>PDF</p>

<p>interests, likely customers for that interest, and the likely process for valuing DOE's interest at the time of exit.</p> <ul style="list-style-type: none"> <li>i. The frequency and timing for when capacity charges will be assessed to the capacity holders. To the extent, capacity holders are required to advance fund a portion of their capacity contracts during construction, custodial or escrow options to place the advance proceeds.</li> <li>j. Copies of resource assessments and market reports that provide the bases for the assumptions and estimates in the modeling.</li> </ul>	
<ul style="list-style-type: none"> <li>k. Modeling demonstrating that there is a reasonable expectation that (a) demand for transmission capacity will be sufficient to support the financial viability of the Proposed Project and (b) DOE will be able to market, transfer, or relinquish its capacity from the Proposed Project on terms sufficient for DOE to recover the costs it incurred over the life of the capacity contract.</li> <li>l. Pro forma financial statements covering the period from project development through final maturity of the Proposed Project. The model shall include balance sheet, profit and loss, source and application of funds statements, and debt service ratios.</li> </ul>	Excel
<p><b>6. Term Sheet (Maximum 10 pages).</b> The Applicant should provide in their Part 1 Application a draft term sheet addressing the provisions the Applicant proposes to include in a capacity contract to be awarded under the TFP, including:</p>	<b>Format</b>
<ul style="list-style-type: none"> <li>a. The term of the contract (including date of execution, commercial operation date, and contract end date);</li> <li>b. The amount of transmission capacity rights the Applicant proposes DOE would have a right to under the capacity contract;</li> <li>c. Indicative rate model and proposed rate to DOE, with supporting data and assumptions;</li> <li>d. Conditions precedent and milestones to ensure expeditious progress of the Proposed Project to commercial operation and the terms on which DOE may terminate a capacity contract for failure of the Proposed Project to satisfy a condition precedent or achieve a milestone;</li> <li>e. Option for short-term commitments (less than 10 years) with renewal rights;</li> <li>f. The proposed timing and method to market, transfer, or relinquish the capacity under DOE's capacity contract, including a commitment to offer DOE's rights to new customers on a pro rata basis with unsubscribed capacity;</li> <li>g. Any ancillary agreement, such as a precedent agreement, facilitation agreement, or other instrument that the Applicant proposes as necessary or desirable to facilitate the TFP capacity contract.</li> </ul>	PDF



## Appendix B: Application Attestation

- The Applicant affirms the following:
  - The Applicant has read and understands the Request for Proposals issued by the U.S. Department of Energy pursuant to the Transmission Facilitation Program.
  - The Applicant is legally authorized to enter into a capacity contract and is in good standing with the U.S. Department of Energy and all other federal programs.
  - The Applicant is current on payment of all amounts owed to the federal government.
  - The Proposed Project will be built and operated within the United States or its territories.
  - If the answer to any of these questions above is “No,” include a detailed explanation of the circumstances that cause the answer to be “No.”
- Lobbying, Debarment, and Related Certifications and Assurances: Applicants will need to certify compliance with 10 CFR Part 601 "New Restrictions on Lobbying," and 10 CFR § 600.113 "Governmentwide Debarment":
- Penalty of Perjury Statement: The following certification must be included with each Application:
  - “The undersigned certifies that the data and information submitted in this Application and any attachments to this Application are true and correct, to the best of the Applicant’s knowledge and belief after due inquiry, and the Applicant has not omitted any material facts. The undersigned further certifies that [s]he has full authority to bind the Applicant.

Applicant (Organization Name)

Name of Applicant’s Authorized Officer

Signature of Authorized Officer

Title of Authorized Officer

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### Appendix C: TFP Part 2 Application and Bid Submission Checklist

Public Interest Factors	
<p><b>1. Statutory Priorities (Maximum 15 pages of text, with additional information provided in Appendices).</b> The IIJA directs the Secretary to prioritize Eligible Projects that serve the public interest as set forth in 42 U.S.C. 18713(j)(8). Accordingly, Applicants should provide information demonstrating to what measurable extent the Proposed Project serves the public interest by cost-effectively addressing these priorities. To make this demonstration, provide:</p>	<b>Format</b>
<ul style="list-style-type: none"> <li>a. Narrative and technical description demonstrating how the use of technology by the Proposed Project will enhance the capacity, efficiency, resiliency, or reliability of an electric power transmission system, including reconductoring of an existing electric power transmission line with advanced conductors, and use of hardware or software that enables dynamic line ratings, advanced power flow control, or grid topology optimization as set forth in 42 U.S.C. 18713(j)(8)(A).</li> <li>b. Analysis demonstrating how completion of the Proposed Project will improve the resilience and reliability of an electric power transmission system (42 U.S.C 18713(j)(8)(B)) and that the Proposed Project would not adversely impact system reliability or operations in the control area in which it will be interconnected. Examples in the analysis should address one or more of the following:               <ul style="list-style-type: none"> <li>i. The Proposed Project’s usefulness in offsetting the impacts of weather and climate-driven events such as drought (delivery to areas that are dependent on hydropower subject to drought), wildfires (delivery to areas that reduce reliance on wildfire-susceptible infrastructure), extreme weather (e.g., temperature extremes and storms);</li> <li>ii. The Proposed Project’s contribution storm-hardening;</li> <li>iii. The Proposed Project’s value in addressing one or more needs or otherwise addressing a vulnerability identified in NERC’s Long Term Reliability Assessment</li> <li>iv. The Proposed Project’s usefulness in supporting black start of one or more regions of the grid as a “cranking path”</li> <li>v. The Proposed Project’s usefulness in reducing susceptibility to low probability, high impact events, such as geomagnetic disturbance.</li> <li>vi. The Proposed Project’s ability to enable ancillary services and other reliability support (e.g., reactive power support, frequency response, load following).</li> </ul> </li> </ul>	PDF

<p>c. Quantitative and qualitative analysis demonstrating that the Proposed Project will facilitate interregional transfer capacity that supports strong and equitable economic growth as set forth in 42 U.S.C. 18713(j)(8)(C).</p> <p>d. Quantitative and qualitative analysis demonstrating that the Proposed Project will contribute to national or subnational goals to lower electricity sector greenhouse gas emissions as set forth in 42 U.S.C. 18713(j)(8)(D), including a reduction in emissions in the load centers that will receive electricity transmitted by the Proposed Project.</p>	
<b>Public Interest Factors</b>	
<b>2. Community Benefits Plan: Job Quality and Equity.</b>	<b>Format</b>
<p>a. Community Benefits Plan: Community Benefits Plan must set forth the Applicant’s approach to ensuring that Federal investments advance the following four goals: 1) community and labor engagement; 2) investing in the American workforce 3) advancing diversity, equity, inclusion, and accessibility (DEIA); and 4) contributing to the Justice40 Initiative. The Community Benefits Plan should be no more than 20 pages.</p> <p>i. <b>Community and Labor Engagement:</b> The Community Benefits Plan must set forth the Applicant’s prior actions and future plans to engage with an inclusive collection of local stakeholders, including labor unions, local government, Tribal government, and community-based organizations that support or work with disadvantaged communities. By facilitating community input and social buy-in and strengthening accountability, such agreements substantially reduce or eliminate certain risks associated with the Proposed Project. Community and labor engagement should lay the groundwork for a Community Benefits Agreement. The Community Benefits Plan should illustrate project viability and social risk mitigation through the delivery of high-quality jobs, minimal environmental impact, and allocation of project benefits to disadvantaged communities.</p> <p>Applicants may provide letters of commitment from representative organizations reflecting substantive feedback on the Applicant’s approach to community benefits including the American workforce; DEIA; and the Justice40 Initiative detailed below.</p> <p>ii. <b>Workforce Continuity and Good Jobs Plan:</b> In the Workforce Continuity and Good Jobs Plan, please describe specific efforts to ensure a well-trained and skilled workforce will be available and engaged to complete the Proposed Project. A Project Labor</p>	PDF

Agreement may provide sufficient detail on skill requirements and provide assurances of skilled worker availability. Unless already included in Project Labor Agreement, Applicants should provide sufficient detail on the following:

- a) How the Applicant will ensure the Proposed Project has ready access to a sufficient supply of appropriately skilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or training (in-house, apprenticeship, etc.);
- b) How the Applicant will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the Proposed Project;
- c) How the Applicant will provide a safe and healthy workplace that trains on the recognition, avoidance, abatement, and prevention of safety and health hazards in workplaces, and avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
- d) How the Proposed Project prioritizes local hires, or an explanation of unfeasibility;
- e) Records to substantiate the information in items i-iii upon request;
- f) Labor Engagement: Project planning should include engagement with appropriate building and construction trades unions. Considering the importance of the priorities listed above and the facilitation by TFP of a Proposed Project to receive a capacity contract under this RFP, labor engagement is a relatively small cost that delivers high value. Proactive and meaningful engagement with labor helps reduce or eliminate certain risks associated with the Proposed Project;
- g) Provide description of engagement and any agreements with the relevant construction trade unions plans to address skill certifications, use of registered apprentices, dispute resolution, project stabilization, and other conditions.

- iii. **Diversity, equity, inclusion, and accessibility (DEIA) Plan:** The Community Benefits Plan must include a section describing how DEIA objectives will be incorporated into the Proposed Project. The section should detail how the Applicant will partner with underrepresented businesses, educational institutions, and training organizations that serve workers who face barriers to accessing quality jobs, and/or other project partners to help address DEIA.

The following is a non-exhaustive list of potential DEIA actions that could be included in a DEIA Plan. This list is offered to provide guidance to Applicants and is not intended to be comprehensive or mandatory.

- a) Commitment to partner with Minority Business Enterprises, Minority Owned Businesses, Woman Owned Businesses, and Veteran Owned Businesses for contractor support needs;
  - b) To fill open positions for the TFP supported project, Applicant partnered with workforce training organizations serving under-represented communities and those facing systemic barriers to quality employment such as those with disabilities, returning citizens, opportunity youth, and veterans.
- iv. **Justice40 Initiative:** Applicants must provide an overview of benefits to disadvantaged communities that the Proposed Project can deliver, supported by measurable milestones. Specifically, the Justice40 Initiative section must include:
- a. Identification of applicable disadvantaged communities to which the anticipated project benefits will flow.
  - b. Identification of applicable benefits that are quantifiable, measurable, and trackable, including, at a minimum, a discussion of the relevance of each of the eight DOE Justice40 Initiative benefits outlined below.
    - i. Benefits include (but are not limited to) measurable direct or indirect investments or positive project outcomes that achieve or contribute to the following in disadvantaged communities: (1) a decrease in energy burden; (2) a decrease in environmental exposure and burdens; (3) an increase in access to low-cost capital; (4) an increase in high quality job creation, the clean energy job pipeline, and job training for individuals; (5) increases in clean energy enterprise creation and contracting (e.g., minority-owned or disadvantaged business enterprises); (6) increases in energy democracy, including community ownership; (7) increased parity in clean energy technology access and adoption; and (8) an increase in energy resilience. In addition, Applicants should also discuss how the Proposed Project will maximize all of the benefits listed in #4.
    - ii. A description of how and when anticipated benefits are expected to flow to disadvantaged communities. For example, will the benefits be provided directly within the disadvantaged community or communities identified in the

<p>Justice40 Initiative section, or are the benefits expected to flow in another way? Further, will the benefits flow during project development or after project completion, and how will the Applicant report benefits deliver?</p> <p>iii. A discussion of anticipated negative and cumulative environmental impacts on disadvantaged communities. Are there anticipated negative or positive environmental impacts associated with the Proposed Project, and how will the Applicant mitigate any negative impacts? Within the context of cumulative impacts created by the Proposed Project, Applicants should use Environmental Protection Agency EJSCREEN tool to quantitatively discuss existing environmental impacts in the project area.</p>	
<b>3. Independent Market Report and Updated Part 1 Information</b>	
<p><b>a. Independent Market Report (Maximum 25 pages of text, with additional information provided in Appendices).</b> The Independent Market Report should provide an assessment of whether and when the Proposed Project will be fully subscribed and the likelihood that DOE will recover its costs under the proposed capacity contract through marketing, transfer, and relinquishment of committed capacity. The Independent Market Report should describe:</p>	<b>Format</b>
<p>i. The assumptions used in the analysis and modeling;</p> <p>ii. Market issues the Proposed Project is intended to address (such as additional supply of electricity or carbon pollution-free electricity, enhanced reliability or resiliency), and a description of competing efforts to solve the same or related issues;</p> <p>iii. Existing and new generation that is likely to access the Proposed Project in terms of generation type, capacity, capacity factor, and timing;</p> <p>iv. Expected delivered cost of electricity associated with the Proposed Project for its target market over the life of the Proposed Project and the competitiveness of those costs relative to other transmission and generation projects;</p> <p>v. The load likely to purchase the electricity delivered by the Proposed Project and the factors expected to drive usage of the Proposed Project (such as renewable energy requirements, load growth, generation retirements and additions, reliability and resiliency objectives);</p> <p>vi. Projections of future regional electricity supply and prices and the conditions likely to drive demand and prices;</p> <p>vii. An assessment of how the Proposed Project will affect economic growth in its footprint and in its target market; and</p> <p>viii. An assessment of market conditions that would affect DOE's ability to</p>	PDF

<p>market, transfer, or relinquish its transmission capacity, the costs that DOE would be able to recover in connection with marketing, transferring, or relinquishing its transmission capacity, and means to mitigate DOE's associated risks.</p>	
<p><b>b. Updated Information Provided in Part 1.</b> The Applicant is required to validate the information provided in Part 1 as follows:</p>	
<p>i. Provide an Independent Engineer's Report that includes analysis and recommendations in the following areas:</p> <ul style="list-style-type: none"> <li>a) Base technology readiness for deployment, including previous commercial or pre-commercial demonstration;</li> <li>b) Engineering and design approach, including engineering risks and mitigations;</li> <li>c) Proposed management team;</li> <li>d) Engineering, procurement, and construction contracting strategy;</li> <li>e) Interconnection plans;</li> <li>f) Integrated project schedule, including the schedule for completion;</li> <li>g) Cost estimates and technical input to the financial model;</li> <li>h) Contractual requirements and arrangements;</li> <li>i) Project construction and operating risks, including mitigation activities and milestones;</li> <li>j) Direct labor requirements during construction and operation;</li> <li>k) Siting and permitting;</li> <li>l) Testing and commissioning;</li> <li>m) Operation and maintenance;</li> <li>n) Waste disposal plan;</li> <li>o) Estimate of the number of construction jobs and permanent jobs expected to be created or retained in the United; and</li> <li>p) Systems Integration: <ul style="list-style-type: none"> <li>i. Evidence that the Proposed Project is not duplicative of the functions of existing or planned transmission lines;</li> <li>ii. Information demonstrating that the Proposed Project is consistent with regional transmission plans and priorities;</li> <li>iii. Evidence that the Proposed Project aligns with the needs assessment performed by the regional transmission entities, and how the Proposed Project will be integrated into the grid.</li> </ul> </li> </ul>	PDF
<p>ii. The Applicant is required to update the information provided in Part 1 by revising in red line the information previously submitted as necessary to reflect the information contained in the Independent Market Report and any other new information that affects the evaluation of the Proposed Project.</p> <p>All modeling results should be updated to be consistent with the new information and the Independent Market Report.</p>	<p>PDF</p> <p>Excel</p>

**Appendix D: Penalty of Perjury Statement**

The following certification must be included with Part 2 of the Application:

- The undersigned certifies that the data and information submitted in this Application and any attachments to this Application are true and correct, to the best of the Applicant's knowledge and belief after due inquiry, and the Applicant has not omitted any material facts. The undersigned further certifies that the undersigned has full authority to bind the Applicant.

Applicant (Organization Name)

Name of Applicant's Authorized Officer

Signature of Authorized Officer

Title of Authorized Officer

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## Appendix E: Required Use of American Iron, Steel, Manufactured Products, and Construction Materials Buy America Requirements for Infrastructure Projects

### A. Definitions

For purposes of the Buy America requirements, based both on IIJA and Office of Management and Budget (OMB) Memorandum M-22-11, the following definitions apply:

**Construction materials** includes an article, material, or supply—other than an item of primarily 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 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; or
- drywall.

**Infrastructure** includes, at a minimum, the structures, facilities, and equipment for, in the United States, 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. Infrastructure includes facilities that generate, transport, and distribute energy.

Moreover, according to OMB Memorandum M-22-11:

When determining if a program has infrastructure expenditures, Federal agencies should interpret the term “infrastructure” broadly and consider the definition provided above as illustrative and not exhaustive. When determining if a particular construction project of a type not listed in the definition above constitutes “infrastructure,” agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project.

DOE, not the applicant, will have the final say as to whether a given project includes infrastructure, as defined herein. Accordingly, in cases where the “public” nature of the

infrastructure is unclear, but the other relevant criteria are met, DOE strongly recommends that applicants complete their full application with the assumption that Buy America requirements will apply to the proposed project.

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

#### **B. Buy America Requirements for Infrastructure Projects (“Buy America” requirements)**

In accordance with Section 70914 of the the IIJA, none of the project funds (includes federal share and recipient cost share) may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are 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 produced in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America requirements only apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor do the Buy America requirements 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.

These requirements must flow down to all sub-awards, all contracts, subcontracts, and purchase orders for work performed under the proposed project, except where the prime recipient is a for-profit entity. Based on OMB Memorandum M-22-11, the Buy America requirements of the IIJA do not apply to DOE projects in which the prime recipient is a for-profit entity; the requirements only apply to projects whose prime recipient is a State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization.

For additional information related to the application and implementation of these Buy America requirements, please see OMB Memorandum M-22-11, issued April 18, 2022:

<https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

Note that for all applicants—both non-Federal entities and for-profit entities—DOE is including a Program Policy Factor that the Selection Official may consider in determining which applications to select for negotiations that considers whether the applicant has made a commitment to procure U.S. iron, steel, manufactured products, and construction materials in its project.

### **C. Waivers**

The agreement entered into between DOE and the awardee will require each recipient: (1) to fulfill the commitments made in its application regarding the procurement of U.S.-produced products and (2) to fulfill the commitments made in its application regarding the procurement of other key component metals and manufactured products domestically that are deemed available in sufficient and reasonably available quantities or of a satisfactory quality at the time of award negotiation.

In limited circumstances, DOE may waive the application of the Buy America requirements where DOE determines that:

- (1) applying the Buy America requirements would be inconsistent with the public interest;
- (2) 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) 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.

If an applicant or recipient is seeking a waiver of the Buy America requirements, it may submit a waiver request after it has been notified of its selection for award. A waiver request must include:

- A detailed justification for the use of “non-domestic” iron, steel, manufactured products, or construction materials to include an explanation as to how the non-domestic item(s) is essential to the project
- A certification that the applicant or recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers
- Applicant/recipient name and Unique Entity Identifier (UEI)
- Total estimated project cost, DOE and cost-share amounts
- Project description and location (to the extent known)

- List and description of iron or steel item(s), manufactured goods, and construction material(s) the applicant or recipient seeks to waive from Domestic Content Procurement Preference requirement, including name, cost, countries of origin (if known), and relevant PSC and NAICS code for each
- Waiver justification including due diligence performed (e.g., market research, industry outreach) by the applicant or recipient
- Anticipated impact if no waiver is issued

DOE may require additional information before considering the waiver request.

Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [link to awarding agency web site with information on currently applicable general applicability waivers].

The applicant does not have the right to appeal DOE's decision concerning a waiver request.

## Appendix F: Federal System Registration Requirements

**System for Award Management (SAM)** – Applicants must register with SAM at <https://www.sam.gov/> prior to submitting an application in response to this RFP. Designating an Electronic Business Point of Contact (EBiz POC) and obtaining a special password called an MPIN are important steps in SAM registration.

The Applicant must maintain an active SAM registration with current information at all times during which it has an active Federal award or application under consideration. More information about SAM registration for Applicants is found at: <https://sam.gov/content/entity-registration>.

**Unique Entity Identification** – Applicants must obtain a UEI from the SAM to uniquely identify the entity. The UEI is available in the SAM entity registration record.