

ADMINISTRATIVE AND LEGAL REQUIREMENTS DOCUMENT (ALRD)



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

State Energy Program (SEP) Program Year 2023 Formula Awards

SEP-ALRD-2023

CFDA Number: 81.041, State Energy Program

Issue Date: 2/21/2023

<u>SEP Program Year Ending</u>	<u>Application Due Date</u>
June 30, 2023	4/27/2023
August 31, 2023	5/11/2023
September 30, 2023	5/25/2023

The complete application package will be due in accordance with each applicant's program year as indicated above. To ensure timely processing of awards, Grantees must submit complete Applications by the above deadlines. Late or incomplete applications will jeopardize issuance of awards prior to the start of the Grantees' Program Year. If sufficient progress in negotiating the final State Plan Application is not being made, the Department of Energy (DOE) reserves the right to put a hold on the funds the Recipient can draw down under the Automated Standard Application for Payments (ASAP) System. The Department of Energy does not guarantee or assume any obligation to reimburse costs incurred in the performance of the agreement if the award is not approved.

REGISTRATION/SUBMISSION REQUIREMENTS

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

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

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

Obtain a Unique Entity Identifier (UEI). Any entity doing business with the federal government will need to use a UEI that is created in SAM. When applicants submit their applications, they will need to provide DOE with their UEI.

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

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

States should contact their respective DOE Project Officer on state-specific questions.

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

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

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PART I AUTHORITY

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

PART II AWARD INFORMATION

A. TYPE OF AWARD INSTRUMENT

DOE will award Grants.

B. ESTIMATED FUNDING

Availability of Funds: Funding for all awards and future budget periods is contingent upon the availability of funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority.

The Grantee shall administer DOE funds received under the SEP in accordance with Federal rules and regulations and state policies and procedures. The Grantee is to manage Federal Funds in a prudent, effective and efficient manner to accomplish program objectives. States should expend all obligated funds within the annual budget period. If a state has unobligated balances to be authorized by a Contracting Officer for carryover from one budget period to another, the state must include an estimate of carry-over funds in its State Application.

Funding Level: Please see the attachment for PY23 allocations. Grantees should develop their State Plans using PY23 SEP allocations.

C. PERIOD OF PERFORMANCE

Contingent on availability of funds, DOE anticipates making awards for the current program year funding period. States are strongly encouraged to expend all obligated funds within the annual Grant year. If a state has unobligated carryover balances from one Grant year to another, the state should include such carryover funds in the State Plan and Budget sections of its continuation application.

Awards will consist of a 3-year Project Period with three 1-year Budget Periods, contingent on availability of funds. A new application is required to be submitted the 1st year. The new application will be assigned a new grant number and should reflect the first year's Federal Allocation, the first year's Cost Match (optional), and other first year contributions. Please note that the new awards cannot include any carryover funds from prior awards. In subsequent years a continuation application will be required reflecting that year's allocation and any carryover.

Extensions to existing awards will not be authorized except in cases of extraordinary circumstances. It is DOE's expectation that states will spend out their entire DOE award by the

end of the 3rd year and that states will plan accordingly. However, DOE will consider extension requests for extraordinary circumstances. Extraordinary circumstances include the loss of personnel for an extended period of time; a change in leadership that necessitates, or a decision by leadership resulting in, a significant change in program plans that significantly delays, or significantly alters, spending; a significant (over three months) freeze on spending; significant delays in procurement; or a natural disaster; or other extraordinary circumstances, including COVID-19 impacts, preventing a state from spending out its funds during its grant period. DOE reserves the right to alter the allowable circumstances for an extension for a given program year at its discretion.

PART III ELIGIBILITY INFORMATION

A. ELIGIBLE APPLICANTS

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

B. COST MATCHING

Cost match is not required for Program Year 2023 Formula awards. If cost match is proposed, it must be included in the budget and budget justification. All sources of cost match are considered part of total project cost, and the cost match dollars will be scrutinized under the same Federal regulations as Federal dollars to the project.

Further information on cost match requirements is detailed in section 5.2 in the Application Instructions.

PART IV APPLICATION AND SUBMISSION INFORMATION

A. CONTENT AND FORM OF APPLICATION

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

PART V AWARD ADMINISTRATION INFORMATION

A. AWARD NOTICES

An Assistance Agreement issued by the Contracting Officer is the authorizing award document. The Assistance Agreement normally includes, either as an attachment or by reference: (1) Special Terms and Conditions; (2) Program regulations [10 CFR Part 420](#); (3) Application as approved by DOE; (4) DOE assistance regulations at [2 CFR Part 200](#) as amended by [2 CFR Part 910](#); (5)

National Policy Assurances To Be Incorporated As Award Terms; (6) Annual File; (7) Master File; (8) Budget Summary; (9) Intellectual Property Provisions; (10) Federal Assistance Reporting Checklist, which identifies the Reporting Requirements; and (11) National Environmental Policy Act (NEPA) Determination. These documents are sent to the Recipient via FedConnect.

B. FUNDING RESTRICTIONS

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

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

C. REPORTING

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

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

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

D. ADMINISTRATIVE AND NATIONAL POLICY REQUIREMENTS

1. Administrative Requirements

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

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

2. National Policy Requirements

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

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

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

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

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

4. Buy American Requirements for Infrastructure Projects

Federally assisted projects which involve infrastructure work, undertaken by applicable recipient types, require that:

- All iron, steel, and manufactured products used in the infrastructure work are produced in the United States; and
- All construction materials used in the infrastructure work are manufactured in the United States.

Whether a given project must apply this requirement is project-specific and dependent on several factors, such as the recipient's entity type, whether the work involves "infrastructure," as that term is defined in Section 70914 of the Bipartisan Infrastructure Law, and whether the infrastructure in question is publicly owned or serves a public function.

A. Definitions

For purposes of the Buy America requirements, 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 additives¹—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.

In addition to the above, the infrastructure in question must be publicly owned or must serve a public function; privately owned infrastructure that is solely utilized for private use is not considered "infrastructure" for purposes of Buy America applicability. The Agency, not the

¹ BIL, § 70917(c)(1).

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, 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 BIL, 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 materials² are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America requirements only applies 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 does 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.

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 does 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.

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>

C. Waivers

² Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

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 is seeking a waiver of the Buy America requirements, it must include a written waiver request with the Full Application. 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, country(ies) 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; and,
- 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 [[DOE Buy America Requirement Waiver Requests | Department of Energy](#)]

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

PART VI OTHER INFORMATION

A. INTERGOVERNMENTAL REVIEW

Program Subject to Executive Order 12372

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

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

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

B. GOVERNMENT RIGHT TO REJECT OR NEGOTIATE

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

C. COMMITMENT OF PUBLIC FUNDS

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

D. LOBBYING RESTRICTIONS

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

E. MODIFICATIONS

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

F. PROPRIETARY APPLICATION INFORMATION

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

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

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

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

G. PROTECTED PERSONALLY IDENTIFIABLE INFORMATION

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

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

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

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

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

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

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

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

PART VII REFERENCE MATERIAL

State Energy Program Notice 23-01

Program Year 2023 SEP Formula Allocations

2023 Formula Award Application Checklist

Annual Summary Template

Disadvantaged Communities (DAC) Template

State Energy Program (SEP) Annual Formula Grant Application Instructions: Selecting Activities, Sectors, Technologies and/or Topic Areas