



STATE & COMMUNITY ENERGY PROGRAMS

Department of Energy Office of State and Community Energy Programs

Bipartisan Infrastructure Law Energy Efficiency and Conservation Block Grant (EECBG) Program Competitive FOA

Funding Opportunity Announcement (FOA) Number: DE-FOA-0002988

FOA Type: Initial

Assistance Listing Number: 81.128, Energy Efficiency and Conservation Block Grant Program

Executive Summary

Timeline

FOA Issue Date:	4/05/2023
Informational Webinar:	4/18/2023
Submission Deadline for Concept Papers:	6/05/2023 5:00pm ET
Submission Deadline for Full Applications:	8/07/2023 5:00pm ET
Expected Date for DOE Selection Notifications:	9/30/2023
Expected Timeframe for Award Negotiations:	Oct-Nov 2023

Program Overview

This Funding Opportunity Announcement (FOA) is for the Energy Efficiency and Conservation Block Grant (EECBG) Program Competitive grant, issued by the US Department of Energy (DOE)'s Office of State and Community Energy Programs (SCEP). This funding opportunity provides \$8.8 million for small-to-medium sized local governments and state-recognized Tribes to:

- (1) Reduce fossil fuel emissions in ways that are environmentally sustainable and maximize benefits for local and regional communities;
- (2) Reduce the total energy use of the eligible entities;
- (3) Improve energy efficiency in the transportation, building and other sectors; and
- (4) Build a clean and equitable energy economy that prioritizes disadvantaged communities and promotes equity and inclusion in workforce opportunities and deployment activities, consistent with the Justice40 Initiative.





DOE is seeking to support communities to make significant progress towards their clean energy goals. Ideal projects will create meaningful impacts on local economies, deeply engage the community, and include a wide range of team members including several local governments and/or Tribes and partner organizations such as labor unions, state energy offices, utilities, community-based non-profits organizations, and community foundations.

Applicants can be in one of two tracks:

- Track 1- Planning, Strategy development, and Analysis or
- Track 2 – Project Implementation and Scaling

Total Funding	Number of Awards	Minimum Award Size	Maximum Award Size	Track	Track Title	Period of Performance
\$8.8 million	10-20	\$200,000	\$2 million	1	Planning, Strategy Development, and Analysis	24 months
				2	Project Implementation and Scaling	24-36 months

DOE anticipates providing smaller awards to applicants with only one community represented (approximately \$200,000-\$500,000); and providing larger awards to applicants representing several communities (approximately \$700,000-\$2,000,000).

Cost sharing is not required.

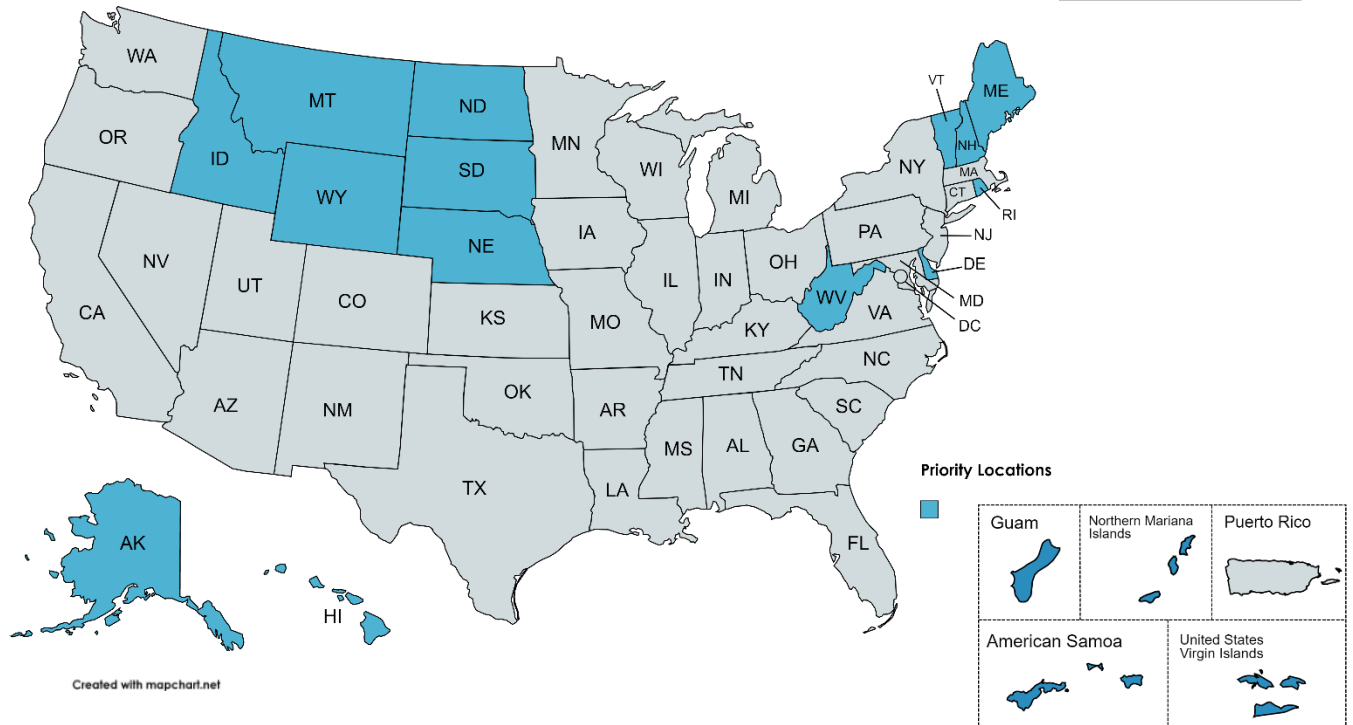
Eligible Applicants

Entities that may apply to this FOA are **only** those US local governments and Indian Tribes that are *ineligible* for the EECBG Formula grant. Indian Tribes that are federally-recognized are not eligible for this program, but state-recognized Tribes are. Local governments that are *not* listed [here](#) are eligible for this program.

DOE encourages communities to team up on a single application. Selected teams will also be eligible to receive a DOE-sponsored, full-time fellow to support their work in their community.

By statute,¹ priority must be given to communities in states and territories with populations < 2 million, namely Alaska, American Samoa, Delaware, Guam, Hawaii, Idaho, Maine, Montana, Nebraska, New Hampshire, North Dakota, Northern Mariana Islands, Rhode Island, South Dakota, U.S. Virgin Islands, Vermont, West Virginia, and Wyoming (See map below); and to proposals that would result in significant energy efficiency improvement or electrification.

¹ 42 U.S. Code § 17156



Project Examples

Below are illustrations of approaches that applicants could pursue under this funding opportunity.

- Develop a regional energy resilience strategy, identifying potential resilience hub locations.
- Create a regional clean energy economic development strategy, and analyze entrepreneurship opportunities and areas to grow the clean energy workforce pipeline.
- Stand up an energy efficiency and electrification workforce training program to serve several neighboring communities and hire a part-time program administrator.
- Create a low-interest financing program for home energy efficiency and electrification improvements and rooftop solar to serve income-qualified community members across a state.
- Design and establish a revolving loan fund to deploy virtual power plants (e.g., grid-interactive efficient buildings, battery storage systems), or building or transportation electrification projects across a utility territory.
- Coordinate with peer communities to design and execute innovative programs to lower energy burdens in rural or suburban settings.
- Pursue energy assessments and efficiency improvements of municipal or Tribal buildings across several communities and hire a shared energy manager to the portfolio of projects.
- Develop a regional stretch energy code for new construction and a building performance standard for existing buildings and provide technical support and training for local code adoption and compliance.



SCEP

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Application Process

To be considered for this funding opportunity, applicants must:

1. **Submit a Concept Paper.** Concept papers are brief descriptions (10 pages or less) of the project proposal, team members, and requested budget amount. Concept papers are due by 6/05/23. DOE will review the concepts and either encourage or discourage applicants to submit a full application. Applicants may submit a full application regardless of whether they are encouraged or discouraged to do so.
2. **Submit a Full Application.** Full applications will go into further details of the project proposal, team qualifications, budget and workplan, and community benefits plan. Full applications are due by 08/07/23.

SCEP will host a webinar on 4/18/2023 to walk interested stakeholders through the EECBG Competitive FOA application process. Go to <https://www.energy.gov/scep/energy-efficiency-and-conservation-block-grant-program> to learn how to register for the webinar or to find a recording of it.

Questions? Ask us at community@hq.doe.gov



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Questions about this FOA? Email community@hq.doe.gov.

Problems with S3 Exchange? Email InfrastructureExchangeSupport@hq.doe.gov Include FOA name and number in subject line.



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Important notes:

- Applicants must submit a Concept Paper on the due date listed above to be eligible to submit a Full Application.
- To apply to this FOA, applicants must register with and submit application materials through Clean Energy Infrastructure Funding Opportunity Exchange (S3 Exchange) at <https://infrastructure-exchange.energy.gov/>, an online application portal.
- **Unique Entity Identifier (UEI) and System for Award Management (SAM)** - Each applicant (unless the applicant is excepted from those requirements under 2 CFR 25.110) is required to: (1) Be registered in the SAM at <https://www.sam.gov> before submitting its application; (2) provide a valid UEI number in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. DOE may not make a federal award to an applicant until the applicant has complied with all applicable UEI and SAM requirements and, if an applicant has not fully complied with the requirements by the time DOE is ready to make a federal award, the DOE will determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

NOTE: Due to the high demand of UEI requests and SAM registrations, entity legal business name and address validations are taking longer than expected to process. Entities should start the UEI and SAM registration process as soon as possible. If entities have technical difficulties with the UEI validation or SAM registration process they should utilize the HELP feature on SAM.gov. SAM.gov will work entity service tickets in the order in which they are received and asks that entities not create multiple service tickets for the same request or technical issue. Additional entity validation resources can be found here: [GSAFSD Tier 0 Knowledge Base - Validating your Entity](#).

- Applicants must designate primary and backup points-of-contact in S3 Exchange with whom DOE will communicate to conduct award negotiations. If an application is selected for award negotiations, it is not a commitment to issue an award. It is imperative that the applicant/selectee be responsive during award negotiations and meet negotiation deadlines. Failure to do so may result in cancelation of further award negotiations and rescission of the selection.



I. Funding Opportunity Description

A. Background and Context

SCEP is issuing this Funding Opportunity Announcement (FOA). Awards made under this FOA will be funded with funds appropriated by the Infrastructure Investment and Jobs Act², more commonly known as the Bipartisan Infrastructure Law (BIL).

The BIL is a once-in-a-generation investment in infrastructure, designed to modernize and upgrade American infrastructure to enhance United States competitiveness, drive the creation of good-paying union jobs, tackle the climate crisis, and ensure stronger access to economic and environmental benefits for disadvantaged communities³. The BIL appropriates more than \$62 billion to the Department of Energy (DOE)⁴ to invest in American manufacturing and workers; expand access to energy efficiency and clean energy; deliver reliable, clean and affordable power to more Americans; and demonstrate and deploy the technologies of tomorrow through clean energy demonstrations.

As part of and in addition to upgrading and modernizing infrastructure, DOE's BIL investments will support efforts to build a clean and equitable energy economy that achieves a zero-carbon electricity system by 2035, and to put the United States on a path to achieve net-zero emissions economy-wide by no later than 2050⁵ to benefit all Americans.

The BIL invests \$8.8 million in this FOA for Fiscal Year 2023, available until expended, for activities to

- (1) reduce greenhouse gas emissions in ways that are environmentally sustainable and maximize benefits for local and regional communities;
- (2) reduce the total energy use of the eligible entities;
- (3) improve energy efficiency in the transportation, building and other sectors; and

² Infrastructure Investment and Jobs Act, Public Law 117-58 (November 15, 2021).

<https://www.congress.gov/bill/117th-congress/house-bill/3684>. This FOA uses the more common name "Bipartisan Infrastructure Law".

³ Pursuant to E.O. 14008 and the Office of Management and Budget's Interim Justice40 Implementation Guidance M-21-28, DOE recognizes disadvantaged communities as defined and identified by the White House Council of Environmental Quality's Climate and Economic Justice Screening Tool (CEJST), which can be located at <https://screeningtool.geoplatform.gov/>. DOE's Justice40 Implementation Guidance is located at <https://www.energy.gov/sites/default/files/2022-07/Final%20DOE%20Justice40%20General%20Guidance%20072522.pdf>.

⁴ U.S. Department of Energy. November 2021. "DOE Fact Sheet: The Bipartisan Infrastructure Deal Will Deliver For American Workers, Families and Usher in the Clean Energy Future." <https://www.energy.gov/articles/doe-fact-sheet-bipartisan-infrastructure-deal-will-deliver-american-workers-families-and-0>

⁵ [Executive Order \(EO\) 14008](#), "Tackling the Climate Crisis at Home and Abroad," January 27, 2021.



-
- (4) Build a clean and equitable energy economy that prioritizes disadvantaged communities and promotes equity and inclusion in workforce opportunities and deployment activities, consistent with the Justice40 Initiative.

The activities to be funded under this FOA as described in BIL section 40552 (b), support the broader government-wide approach to increasing energy efficiency and electrification, deploying clean energy technologies, and reducing greenhouse gas emissions while maximizing benefits to the local community as the nation works to curb the climate crisis, empower workers, and advance environmental justice.

i. Program Purpose

The purpose of this program is to provide grants and technical assistance to local governments and Tribes that are *not* eligible for an EECBG formula grant. Funds will support the creation and implementation of programs and projects that increase the rate of adoption of clean energy at the local level. The program will enable communities to reduce barriers to clean energy deployment in their local areas and make significant progress towards clean energy goals. The program encourages communities to team up with other eligible communities and important stakeholders to expand the reach and impact of the effort. See additional information about eligibility in Section III below.

Communities selected for this program will receive financial support and technical assistance to develop (1) plans and strategies to accelerate their rate of clean energy deployment, and (2) projects and programs to deploy clean energy technologies and get to scale. Proposed initiatives should result in a significant acceleration of the pace of clean energy deployment compared to the status quo. All projects should include stakeholder engagement plans or reference past engagement, in order to ensure work completed under this grant aligns with the most pressing needs of community members. Finally, proposals should demonstrate measurable benefits to communities, particularly to disadvantaged communities.

The EECBG Competitive FOA will prioritize applications, per statute,⁶ that include one or more of the following characteristics:

1. Communities in states and territories with populations less than 2 million—AK, AS, DE, GU, HI, ID, ME, MP, MT, ND, NE, NH, RI, SD, VI, VT, WV, WY (See map below);
2. Projects that will result in significant energy efficiency improvements or reductions in fossil fuel use.

DOE also encourages eligible communities to team up on a single project to reduce paperwork burden, and to maximize impacts.

⁶ 42 U.S. Code § 17156



workers to join a union.¹¹ Applicants to this FOA will also be asked to explain how their proposed projects will engage and benefit disadvantaged communities.

ii. Strategic Goals

The objectives of this FOA are to fund applications that:

- Address barriers to clean energy deployment in communities, such that communities will make significant progress towards energy efficiency or electrification as a result of implementing the project.
- Demonstrate the ability to achieve measurable and ambitious clean energy goals.
- Leverage the participation and support of multiple local jurisdictions, Tribes, regional planning agencies, community-based organizations, community foundations, and relevant state offices.
- Clearly articulate and demonstrate the ability to deliver on the goals of the Justice40 Initiative.
- Create momentum to continue clean energy efforts beyond the grant period and/or have the ability to be replicated in other areas of the country.
- Spur the creation or retention of jobs and economic development opportunities.

B. Tracks and Activity Areas

i. Two Tracks

Applicants can be in one of two tracks:

- Track 1- Planning, analysis, and strategy development, or
- Track 2 - Implementation and scaling.

Proposals may span a wide range of geographic scopes from neighborhood-wide efforts to regional, multi-state efforts.

DOE encourages applicants to pursue projects that directly benefit community members, especially members of disadvantaged communities. Community benefits may include creation of new jobs or economic opportunities for local companies or workers, lowered energy burdens, increased access to renewable energy, improved air quality, and increased public participation in energy decision-making processes.

ii. Activity Areas

Proposals may span a wide variety of technology areas including electric transportation, renewable energy, and building efficiency and/or electrification. Applicants shall propose programs and projects that align with one or more of the following activity areas, as defined in 42 U.S. Code § 17156:

¹¹ EO 14008, "Tackling the Climate Crisis at Home and Abroad," January 27, 2021.



- (1) Development and implementation of an Energy Efficiency and Conservation Strategy;
- (2) Retaining technical consultant services to assist the eligible entity in the development of such a strategy ;
- (3) Conducting residential and commercial building energy audits;
- (4) Establishment of financial incentive programs for energy efficiency improvements;
- (5) The provision of grants to nonprofit organizations and governmental agencies for the purpose of performing energy efficiency retrofits;
- (6) Development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the eligible entity;
- (7) Development and implementation of programs to conserve energy used in transportation;
- (8) Development and implementation of building codes and inspection services to promote building energy efficiency;
- (9) Application and implementation of energy distribution technologies that significantly increase energy efficiency;
- (10) Activities to increase participation and efficiency rates for material conservation programs, including source reduction, recycling, and recycled content procurement programs that lead to increases in energy efficiency;
- (11) The purchase and implementation of technologies to reduce, capture, and, to the maximum extent practicable, use methane and other greenhouse gases generated by landfills or similar sources;
- (12) Replacement of traffic signals and street lighting with energy efficient lighting technologies
- (13) Development, implementation, and installation on or in any government building of the eligible entity of onsite renewable energy technology that generates electricity from renewable resources, including—
 - (A) solar energy;
 - (B) wind energy;
 - (C) fuel cells; and
 - (D) biomass; and
- (14) Programs for financing energy efficiency, renewable energy, and zero-emission transportation (and associated infrastructure), capital investments, projects, and programs, which may include loan programs and performance contracting programs, for leveraging of additional public and private sector funds, and programs that allow rebates, grants, or other incentives for the purchase and installation of energy efficiency, renewable energy, and zero-emission transportation (and associated infrastructure) measures.

All work for projects selected under this FOA must be performed in the United States. See Section IV.I.iii. and Appendix A.



Below are illustrations of approaches that applicants could pursue under this funding opportunity.

- Develop a regional energy resilience strategy, identifying potential resilience hub locations
- Create a regional clean energy economic development strategy, and analyze entrepreneurship opportunities and areas to grow the clean energy workforce pipeline
- Stand up an energy efficiency and electrification workforce training program¹² to serve several neighboring communities and hire a part-time program administrator.
- Create a low-interest financing program for home energy efficiency improvements and rooftop solar to serve income-qualified community members across a state.
- Design and establish a revolving loan fund to deploy virtual power plants (e.g., grid-interactive efficient buildings, battery storage systems), or building or transportation electrification projects across a utility territory.
- Coordinate with peer communities to design and execute innovative programs to lower energy burdens in rural or suburban settings.
- Pursue energy assessments and efficiency improvements of municipal or Tribal buildings across several communities and hire a shared energy manager to support the portfolio of projects.
- Develop a regional stretch energy code for new construction and a building performance standard for existing buildings and provide technical support and training for local code adoption and compliance.

C. Technical Assistance

SCEP intends to provide technical assistance to selected awardees, including across several clean energy topic areas, community engagement, Justice40 best practices, and to support using DOE or national lab tools. EECBG Competitive awardees will have access to:

- **Community of Practice trainings and webinars:**
 - Coaching to increase local capacity and ensure support implementation
 - Equity training, with focus on procedural justice practices
 - Community and union engagement best practices
 - Navigating other federal resources
 - Metrics and data reporting
- **Invitations to DOE workshops and events** (e.g. Better Buildings Summit)
- **Customized matchmaking with relevant partners, such as state energy offices or philanthropic organizations**
- **Resources and access to experts**
 - EECBG Blueprints
 - Clean Energy Corps in the Field deployment
 - One-on-one assistance from national labs and/or other technical partners

¹² For more information on related BIL workforce development funding opportunities, see the [Career Skills Training Program](#) and the [Energy Auditor Training Grant Program](#).



D. Teaming

DOE encourages eligible entities to team up on a single application in order to (1) ease the administrative burdens associated with managing a federal grant, (2) maximize the scope, reach, and level of ambition for the proposed projects and programs, and (3) encourage sharing of capacity, knowledge, expertise, lessons learned and best practices across jurisdictions. Successful team applicants that are selected for funding will be eligible to also receive a DOE-sponsored, full-time fellow, as part of the Clean Energy Corps in the Field program. Fellows would be co-located with the prime applicant and would support the execution of the team's endeavors under this grant program.

Partner organizations, such as non-profit organizations, quasi-governmental organizations, community-based organizations, academic institutions, regional organizations, and national labs (also referred to as Federally Funded Research and Development Centers --FFRDCs) may not be applicants for this program, but may be partners or participants on proposed projects. A local government or state-recognized Tribe must be the prime applicant, but partner organizations may be sub-recipients. Private companies, utilities and community foundations may also participate, and could consider providing cost share to the effort, although cost share is not required for any applicant. See more about eligibility in Section III below.

i. Teaming Partner List

DOE is compiling a "Teaming Partner List" to facilitate the formation of new project teams for this FOA. The Teaming Partner List allows organizations who may wish to participate on an application to express their interest to other applicants and to explore potential partnerships.

Updates to the Teaming Partner List will be available in the S3 Exchange website. The Teaming Partner List will be regularly updated to reflect new teaming partners who provide their organization's information.

SUBMISSION INSTRUCTIONS: Any organization that would like to be included on this list should submit the following information: Organization Name, Contact Name, Contact Address, Contact Email, Contact Phone, Organization Type, Area of Technical Expertise, Brief Description of Capabilities, and Area of Interest. Interested parties should fill out this form <https://forms.office.com/g/ksbYZ7x0Cc> or email the information to community@hq.doe.gov with the subject line "Teaming Partner Information."

DISCLAIMER: By submitting a request to be included on the Teaming Partner List, the requesting organization consents to the publication of the above-referenced information. By facilitating the Teaming Partner List, DOE is not endorsing, sponsoring, or otherwise evaluating the qualifications of the individuals and organizations that are self-identifying themselves for placement on this Teaming Partner List. DOE will not pay for the provision of any information,



nor will it compensate any applicants or requesting organizations for the development of such information.

E. Applications Specifically Not of Interest

The following types of applications will be deemed nonresponsive and will not be reviewed or considered:

- Applications that fall outside the parameters specified in Section I.A. and the activity areas listed in Section I.B. of the FOA.
- Applications for which the prime applicant is not an eligible applicant, as described in Section III.A.i.
- Applications for proposed technologies that are not based on sound scientific principles (e.g., violates the laws of thermodynamics).

F. Community Benefits Plan: Job Quality and Equity

To support the goal of building a clean and equitable energy economy, the BIL-funded projects are expected to (1) support meaningful community and labor engagement; (2) invest in America’s workforce; (3) advance diversity, equity, inclusion, and accessibility; and (4) contribute to the President’s goal that 40% of the benefits of certain Federal investments flow to disadvantaged communities (the Justice40 Initiative). To ensure these goals are met, applications must include a Community Benefits Plan that describes how the proposed project would incorporate the four objectives stated above.

Applicants are encouraged to submit Community and Labor Engagement Plans from established labor and community-based organizations that demonstrate the applicant’s ability to achieve the above goals as outlined in the Community Benefits Plan. Within the Community Benefits Plan, the applicant is encouraged to provide specific detail on how to ensure the delivery of measurable community and jobs benefits, ideally through the use of negotiated agreements between the applicant and the community members of organizations, and/or the applicant and labor unions referred to collectively here as “Workforce and Community Agreements.” These include good neighbor agreements, community benefits agreements, community workforce agreements, project labor agreements, and other collective bargaining agreements. See Section IV.D.ii. for the Community Benefits Plan content requirements.

G. Authorizing Statutes

The EECBG Program is authorized under Title V, Subtitle E of the Energy Independence and Security Act of 2007 (EISA), as amended,¹³ and signed into Public Law (PL 110-140) on December 19, 2007. All awards made under this program shall comply with applicable laws and regulations including, but not limited to, the DOE financial assistance regulations at 2 CFR Part

¹³ 42 U.S.C. 17151 et seq.



200 as amended by 2 CFR Part 910 and Section 40552 of the Infrastructure Investment and Jobs Act.

H. Notice of Bipartisan Infrastructure Law-Specific Requirements

Be advised that special terms and conditions apply to projects funded by the BIL relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Access to records by Inspectors General and the Government Accountability Office;
- Requiring all of the iron, steel, manufactured goods, and construction materials used in the infrastructure activities of applicable projects are produced in the United States;
- Ensuring laborers and mechanics employed by contractors or subcontractors on BIL-funded projects are paid wages equivalent to prevailing wages on similar projects in the area;
- Protecting whistleblowers and requiring prompt referral of evidence of a false claim to an appropriate inspector general; and
- Certification and Registration.

Recipients of funding appropriated by the BIL must comply with requirements of all applicable federal, state, and local laws, regulations, DOE policy and guidance, and instructions in this FOA. Recipients must pass along (or “flow down”) the requirements to subrecipients to ensure the recipient’s compliance with the requirements.

II. Award Information

A. Award Overview

i. Estimated Funding

DOE expects to make a total of approximately \$8.8 million of federal funding available for new awards under this FOA, subject to the availability of appropriated funds. DOE anticipates making approximately 10-20 awards under this FOA. DOE may issue one, multiple, or no awards. Individual awards may vary between \$200,000 and \$2,000,000.

DOE may issue awards in one, multiple, or none of along the following tracks. Please note the following data are merely anticipated and can change at DOE’s discretion.



Total Funding	Number of Awards	Minimum Award Size	Maximum Award Size	Track	Track Title	Period of Performance
\$8.8 million	10-20	\$200,000	\$2 million	1	Planning, Strategy Development, and Analysis	24 months
				2	Project Implementation and Scaling	24-36 months

DOE anticipates providing smaller awards to applicants with only one community represented (approximately \$200,000-\$500,000); and providing larger awards to applicants representing several communities (approximately \$700,000-\$2,000,000).

ii. Period of Performance

DOE anticipates making awards that will run up to 24-36 months in length, comprised of one or more budget periods.

- Track 1 proposals and smaller awards should anticipate a 24-month period of performance.
- Track 2 proposals and larger awards may have a 24-36-month period of performance.

DOE may establish more than one budget period for each award and fund only the initial budget period(s). Funding for all budget periods, including the initial budget period, is not guaranteed. Project continuation will be contingent upon several elements, including satisfactory performance.

iii. New Applications Only

DOE will accept only new applications under this FOA. DOE will not consider applications for renewals of existing DOE-funded awards through this FOA.

B. DOE Funding Agreements

Through cooperative agreements and other similar agreements, DOE provides financial and other support to projects that have the potential to realize the FOA objectives. DOE does not use such agreements to acquire property or services for the direct benefit or use of the United States government.

i. Cooperative Agreements

DOE generally uses cooperative agreements to provide financial and other support to prime recipients. Through cooperative agreements, DOE provides financial or other support to accomplish a public purpose of support or stimulation authorized by federal statute. Under cooperative agreements, the government and prime recipients share responsibility for the direction of projects. DOE has substantial involvement in all projects funded via cooperative



agreement. See Section VI.B.ix. of the FOA for more information on what substantial involvement may involve.

ii. Funding Agreements with National Labs - Federally Funded Research and Development Center (FFRDCs)¹⁴

In most cases, FFRDCs are funded independently of the remainder of the project team. The FFRDC then executes an agreement with any non-FFRDC project team members to arrange work structure, project execution, and any other matters. Regardless of these arrangements, the entity that applied as the prime recipient for the project will remain the prime recipient for the project. See Section III.E.i.

III. Eligibility Information

To be considered for substantive evaluation, an applicant's submission must meet the criteria set forth below. If the application does not meet these eligibility requirements, it will be considered ineligible and removed from further evaluation.

A. Eligible Applicants

i. Prime recipients: Local and Tribal Governments

The only entities that may be prime recipients for this FOA are US cities, counties and Indian Tribes that are *ineligible* to receive an EECBG Formula award as listed [here](#). This includes Indian Tribes that are not Federally-recognized but are State-recognized, and local governments that are *not* listed [here](#).¹⁵ Groups of eligible entities are encouraged to team up and submit a single application.

ii. Sub-recipients: Domestic Entities

The proposed subrecipient(s) must be domestic entities. The following types of domestic entities are eligible to participate as a subrecipient of this FOA:

1. Institutions of higher education;
2. For-profit entities;
3. Non-profit entities including community-based organizations; and
4. State and local governmental entities, and Tribal nations.

¹⁴ Federally Funded Research and Development Centers (FFRDC) - FFRDCs are also known as National Labs. They are public-private partnerships which conduct research for the United States government. A listing of FFRDCs can be found at <http://www.nsf.gov/statistics/ffrdclist/>.

¹⁵ For more details around the definitions of cities, counties, and Tribes for the purposes of EECBG, see the EECBG Formula Grant NOTICE OF INTENT No. DE-FOA-0002882 Available here: <https://eere-exchange.energy.gov/FileContent.aspx?FileID=b3e1568b-2136-4bb4-b859-1ac82e2df37c>



To qualify as a domestic entity, the entity must be organized, chartered or incorporated (or otherwise formed) under the laws of a particular state or territory of the United States and have a physical place of business in the United States.

DOE/NNSA FFRDCs are eligible to apply for funding as a subrecipient, but are not eligible to apply as a prime recipient.

Non-DOE/NNSA FFRDCs are eligible to participate as a subrecipient but are not eligible to apply as a prime recipient.

Federal agencies and instrumentalities (other than DOE) are eligible to participate as a subrecipient, but are not eligible to apply as a prime recipient.

Entities banned from doing business with the United States government such as entities debarred, suspended, or otherwise excluded from or ineligible for participating in Federal programs are not eligible.

Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code of 1986 that engaged in lobbying activities after December 31, 1995, are **not** eligible to apply for funding.

iii. Incorporated Consortia

Domestic incorporated consortia are eligible to participate as a subrecipient. For consortia incorporated (or otherwise formed) under the laws of a state or territory of the United States, please refer to “Domestic Entities” above.

Each consortium must have an internal governance structure and a written set of internal rules. Upon request, the consortium must provide a written description of its internal governance structure and its internal rules to the DOE Contracting Officer.

iv. Unincorporated Consortia

Unincorporated Consortia must designate one member of the consortium to serve as the prime recipient/consortium representative. The prime recipient/consortium representative must qualify as a domestic entity.

Upon request, unincorporated consortia must provide the DOE Contracting Officer with a collaboration agreement, commonly referred to as the articles of collaboration, which sets out the rights and responsibilities of each consortium member. This agreement binds the individual consortium members together and should include the consortium’s:



-
- Management structure;
 - Method of making payments to consortium members;
 - Means of ensuring and overseeing members' efforts on the project;
 - Provisions for members' cost sharing contributions; and
 - Provisions for ownership and rights in intellectual property developed previously or under the agreement.

B. Cost Sharing

Cost sharing is not required under this FOA.

C. Compliance Criteria

All applicant submissions must:

- comply with the applicable content and form requirements listed in Section IV. of the FOA;
- include all required documents;
- be successfully uploaded in S3 Exchange <https://infrastructure-exchange.energy.gov>, including clicking the "Submit" button; and
- be submitted by the deadline stated in the FOA.

DOE will not review or consider submissions submitted through means other than S3 Exchange, submissions submitted after the applicable deadline, or incomplete submissions.

Applicants are strongly encouraged to submit their Concept Papers and Full Applications at least 48 hours in advance of the submission deadline. Under normal conditions (i.e., at least 48 hours in advance of the submission deadline), applicants should allow at least 1 hour to submit a Concept Paper or Full Application. Once the Concept Paper or Full Application is submitted in S3 Exchange, applicants may revise or update that submission until the expiration of the applicable deadline. If changes are made to any of these documents, the applicant must resubmit the Concept Paper or Full Application before the applicable deadline. DOE will not extend the submission deadline for applicants that fail to submit required information by the applicable deadline due to server/connection congestion.

D. Responsiveness Criteria

All "Applications Specifically Not of Interest," as described in Section I.E. of the FOA, are deemed nonresponsive and are not reviewed or considered.

E. Other Eligibility Requirements



i. Requirements for National Labs - DOE/NNSA and non-DOE/NNSA FFRDCs Included as a Subrecipient

DOE/NNSA and non-DOE/NNSA FFRDCs may be proposed as a subrecipient on another entity's application subject to the following guidelines:

a. Authorization for non-DOE/NNSA FFRDCs

The federal agency sponsoring the FFRDC must authorize in writing the use of the FFRDC on the proposed project and this authorization must be submitted with the application. The use of a FFRDC must be consistent with its authority under its award.

b. Authorization for DOE/NNSA FFRDCs

The cognizant Contracting Officer for the FFRDC must authorize in writing the use of the FFRDC on the proposed project and this authorization must be submitted with the application. The following wording is acceptable for this authorization:

Authorization is granted for the Laboratory to participate in the proposed project. The work proposed for the Laboratory is consistent with or complementary to the missions of the Laboratory, and will not adversely impact execution of the DOE assigned programs at the Laboratory.

c. Funding and Subaward with FFRDCs

DOE will NOT fund DOE/NNSA FFRDCs participating as a subrecipient through the DOE field work authorization process. DOE will NOT fund non-DOE/NNSA FFRDCs through an interagency agreement with the sponsoring agency. Therefore, the prime recipient and FFRDC are responsible for entering into an appropriate subaward that will govern, among other things, the funding of the FFRDC portion of the work from the prime recipient under its DOE award. Such an agreement must be entered into before any project work begins. The applicant should prepare the budgets utilizing rates appropriate for funding the FFRDCs through subawards.

d. Responsibility

The prime recipient will be the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues including, but not limited to disputes and claims arising out of any agreement between the prime recipient and the FFRDC.

F. Limitation on Number of Concept Papers and Full Applications Eligible for Review



An entity may submit more than one Concept Paper and Full Application to this FOA, provided that each application describes a unique, scientifically distinct project and provided that an eligible Concept Paper was submitted for each Full Application.

G. Questions Regarding Eligibility

DOE will not make eligibility determinations for potential applicants prior to the date on which applications to this FOA must be submitted. The decision whether to submit an application in response to this FOA lies solely with the applicant.

IV. Application and Submission Information

A. Application Process

The application process includes multiple phases: a Concept Paper phase, and a Full Application phase. **Only applicants who have submitted an eligible Concept Paper will be eligible to submit a Full Application.**

All submissions must conform to the form and content requirements described below, including maximum page lengths.

- Each must be submitted in Adobe PDF format unless stated otherwise;
- Each must be written in English;
- All pages must be formatted to fit on 8.5 x 11 inch paper with margins not less than one inch on every side. Use Calibri typeface, a black font color, and a font size of 12 point or larger (except in figures or tables, which may be 10 point font). A symbol font may be used to insert Greek letters or special characters, but the font size requirement still applies. References must be included as footnotes or endnotes in a font size of 10 or larger. Footnotes and endnotes are counted toward the maximum page requirement;
- A **control number** will be issued when an applicant begins the S3 Exchange application process. The control number must be included with all application documents. Specifically, the control number must be prominently displayed on the upper right corner of the header of every page and included in the file name (i.e., *Control Number_Applicant Name_Full Application*);
- Page numbers should be included in the footer of every page; and
- While visuals and charts are encouraged, each submission must not exceed the specified maximum page limit, including cover page, charts, graphs, maps, and photographs when printed using the formatting requirements set forth above and single spaced. If applicants exceed the maximum page lengths indicated below, DOE will review only the authorized number of pages and disregard any additional pages.



i. Additional Information on S3 Exchange

S3 Exchange is designed to enforce the deadlines specified in this FOA. The “Apply” and “Submit” buttons will automatically disable at the defined submission deadlines. Should applicants experience problems with S3 Exchange, the following information may be helpful.

Applicants that experience issues with submission PRIOR to the FOA deadline: In the event that an applicant experiences technical difficulties with a submission, the applicant should contact the S3 Exchange helpdesk for assistance (InfrastructureExchangeSupport@hq.doe.gov). The S3 Exchange helpdesk and/or the S3 Exchange system administrators will assist applicants in resolving issues.

B. Application Forms

The application forms and instructions are available on S3 Exchange. To access these materials, go to <https://infrastructure-exchange.energy.gov> and select the appropriate funding opportunity number.

Note: The maximum file size that can be uploaded to the S3 Exchange website is 10 MB. Files in excess of 10MB cannot be uploaded, and hence cannot be submitted for review. If a file exceeds 10MB but is still within the maximum page limit specified in the FOA, it must be broken into parts and denoted to that effect. For example:

TechnicalVolume_Part_1
TechnicalVolume_Part_2

DOE will not accept late submissions that resulted from technical difficulties due to uploading files that exceed 10MB.

C. Content and Form of the Concept Paper

Each Concept Paper must be limited to a single concept or technology. The Concept Paper must conform to the requirements listed below. **Concept papers should be no longer than 10 pages.**

Section	Page Rec.	Description
Cover Page	1 page	The cover page should include the control number, project title, both the lead project manager and business points of contact, names of all team member and partner organizations and their respective roles, the project location(s), federal budget requested, cost share if applicable, and any statements regarding confidentiality. The cover page should also indicate “Track 1- Planning, Analysis & Strategy” or “Track 2 – Implementation and Scaling.”
Project Description	3-4 pages	Applicants are required to succinctly describe the proposal, and should include the following: <ol style="list-style-type: none"> 1. Summary of plan: An explanation of the proposed project, including the approach, a project timeline, the proposed geographic scope, and the vision for how the proposed project will be sustained beyond the grant period;



		<ol style="list-style-type: none"> 2. Project Impact: The impacts of the proposed project, and how the project would accelerate the rate of clean energy deployment in the community and beyond, and how it is a significant improvement over the status quo. Include baseline metrics and proposed outcomes (e.g. near-term and long-term greenhouse gas emissions, fossil fuel use, and/or energy use; or increase in the use of clean energy); 3. Strength of Team: Team qualifications; 4. Budget details; 5. The impact that DOE funding would have on the proposed project; and 6. <i>For Track 2 proposals only–</i> <ol style="list-style-type: none"> a. Selected clean energy technologies or activities, and measurable targets or goals; and b. The impact that the proposed project would have on energy burdens, greenhouse gas emissions, clean energy deployment, and/or local job creation in the near- and long-terms, as compared to baseline data.
Community Benefits Plan	1-2 pages	<p>Applicants are required to describe succinctly how the project team will:</p> <ol style="list-style-type: none"> 1. Engage the community, labor, and other stakeholders, including community-based organizations, utilities, foundations, or private companies, and labor unions. Describe which project elements will be co-created with community members or partners; 2. Consider the needs and opportunities of the local workforce to engage in clean energy, including ensuring job quality and workforce continuity; 3. Advance diversity, equity, inclusion, and accessibility; and 4. Provide direct benefits to community members and how it contributes/will contribute to the Justice40 Initiative goal that 40% of the benefits of certain Federal investments flow to communities including disadvantaged communities.
Addendum, Optional	3 pages maximum	Applicants may optionally provide graphs, charts, images, maps, or other data to supplement their Project Description.

DOE makes an independent assessment of each Concept Paper based on the criteria in Section V. of the FOA. DOE will encourage a subset of applicants to submit Full Applications. Other applicants will be discouraged from submitting a Full Application. See Section VI.A.

D. Content and Form of the Full Application

Applicants must complete the following application forms found on the S3 Exchange website at <https://infrastructure-exchange.energy.gov/>.

Applicants will have approximately 30-45 days from receipt of the Concept Paper Encourage/Discourage notification on S3 Exchange to prepare and submit a Full Application. Regardless of the date the applicant receives the Encourage/Discourage notification, the submission deadline for the Full Application remains the date and time stated on the FOA cover page.



All Full Application documents must be marked with the control number issued to the applicant.

Full Application Content Requirements

Each Full Application must be limited to a single concept. Full Applications must conform to the following requirements, and must not exceed the stated page limits.

Section	Component	File Format	Page Recommendation	File Name
i.	Project Narrative, including locations of work	PDF	10	ControlNumber_LeadOrganization_TechnicalVolume
ii.	Community Benefits Plan	PDF	5-12	ControlNumber_LeadOrganization_CBenefits
iii.	Budget Information	Excel	N/A	ControlNumber_LeadOrganization_Budget
iv.	Letters of Commitment	PDF	1 page each	ControlNumber_LeadOrganization_LOCs
v.	Community Partnership Documentation	PDF	1 page each, max 10 pages	ControlNumber_LeadOrganization_PartnerDocs
vi.	SF-424: Application for Federal Assistance	PDF	3	ControlNumber_LeadOrganization_App424
vii.	Summary/Abstract for Public Release	PDF or MS Word	0.5-1	ControlNumber_LeadOrganization_Summary
viii.	Summary Slide	MS Powerpoint	1	ControlNumber_LeadOrganization_Slide
ix.	SF-LLL Disclosure of Lobbying Activities	PDF	n/a	ControlNumber_LeadOrganization_SF-LLL
The following items are required, if applicable				
x.	DOE Work Proposal for national lab partner (FFRDC), if applicable (see DOE O 412.1A, Attachment 3)	PDF	n/a	ControlNumber_LeadOrganization_WP
xi.	Authorization from cognizant Contracting Officer for FFRDC, if applicable	PDF	n/a	ControlNumber_LeadOrganization_FFRDCAuth
Additional items will be required if the applicant is selected, including the following				
i.	Statement of Project Objectives	MS Word	4-6	ControlNumber_LeadOrganization_SOPO
ii.	Full Budget Justification Workbook	MS Excel	n/a	ControlNumber_LeadOrganization_Budget_Justification
iii.	Subrecipient Budget Justification, if applicable	MS Excel	n/a	ControlNumber_LeadOrganization_Subrecipient_Budget_Justification
iv.	Potentially Duplicative Funding Notice, if applicable	PDF	N/A	ControlNumber_LeadOrganization_PDFN



v.	Cybersecurity Plan	MS Word	1-2	ControlNumber_LeadOrganization_Cyber
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Note: The maximum file size that can be uploaded to the S3 Exchange website is 10MB. See Section IV.B.

DOE provides detailed guidance on the content and form of each component below.

i. Project Narrative

The Project Narrative should clearly describe and expand upon information provided in the Concept Paper.



The Project Narrative must conform to the following content and form requirements. The Project Narrative to the Full Application should be approximately 10 pages, but no more than 12 pages, including the cover page, any charts, graphs, maps, photos, or other graphics, and must include all of the information in the table below. The applicant should consider the weighting of each of the technical review criteria (see Section V.) when preparing the Technical Volume. The Project Narrative must also list the city, state, and zip code + 4 for each location where project work will be performed by the prime recipient or subrecipient(s).

Applicants may provide citations and references to research to justify the claims and approaches made in the Technical Volume, if applicable. However, DOE and reviewers are under no obligation to review cited sources. Save the Project Narrative in a single PDF file using the following convention for the title “ControlNumber_LeadOrganization_ProjectNarrative.”


Project Narrative Content Requirements	
SECTION (Recommended # of Pages)	DESCRIPTION
Cover Page (1 page)	<p>The cover page should include the following.</p> <ul style="list-style-type: none"> • Control number, Project title • “Track 1- Planning, Analysis & Strategy” or “Track 2 – Implementation and Scaling” • Prime applicant organization, Names of all team member organizations • Names and contact information for the lead project manager and business points of contact¹⁶ • The project location(s), including zip codes • Federal budget requested, as divided among prime and sub-recipients, if applicable

¹⁶ Lead project manager is responsible for the management of the entire project, and the business point of contact is the individual leading on the project’s budget and fiscal needs and responsibilities.



<p>Project Description, Impact and Measurement (Approximately 3 pages)</p> 	<ul style="list-style-type: none">• Any statements regarding confidentiality, if applicable <p>The Project Description should contain the following information:</p> <ul style="list-style-type: none">• Background: The applicant should describe the communities on the proposal and their goals related to clean energy, energy efficiency, fossil fuel and greenhouse gas emissions reduction, and/or sustainability. Briefly explain the communities' progress made to date, and challenges and obstacles that remain.• Project Vision and Strategy: The applicant should provide a brief description of the proposal's vision and strategy, including ways the proposed project will overcome barriers to clean energy deployment and produce near-term and long-term results.• Additionality: The applicant should discuss the impact that DOE funding would have on the proposed project. Applicants should specifically explain how DOE funding, relative to prior, current, or anticipated funding from other public and private sources, is necessary to achieve the project objectives.• Feasibility: The applicant should describe the feasibility of the proposed approach of achieving the anticipated performance targets, including a description of previous work done and prior results.• Innovation and Replicability: The applicant should briefly describe what makes this proposal innovative and how it will be replicated by other jurisdictions into the future.
<p>Workplan (Approximately 3 pages)</p> 	<p>The Workplan should include a summary of the Project Objectives, Milestones, and Project Schedule. A detailed SOPO is separately requested. The Workplan should contain the following information:</p> <ul style="list-style-type: none">• Project Objectives: The applicant should provide a clear and concise high-level statement of the goals and objectives of the project as well as the expected outcomes.• Project Milestones and Metrics: The applicant should explain the project goals, deliverables, milestones and metrics that will be tracked (e.g. BTUs or KWh of energy use reduced, GHGs lowered, percentage of fossil fuel use reduced, kW of renewable energy deployed).• Approach Summary: The applicant should provide a summary description of the overall work scope and approach to achieve the objective(s). The overall work scope is to be divided by quarterly periods that are separated by discrete milestones. The applicant should describe the specific expected end result of each performance period, including milestones in the Community Benefits Plan.• End of Project Goal: The applicant should provide a summary of the end of project goal(s). At a minimum, each project must have one Specific, Measureable, Achievable, Relevant, and Timely (SMART) end of project goal. The summary provided should be consistent with the SOPO.• Project Schedule: The applicant should provide a schedule for the entire project, including estimated completion dates of key tasks and milestones.• Buy America Requirements for Infrastructure Projects: Include a short statement on whether the project will involve the construction, alteration, and/or repair of



	<p>infrastructure in the United States. See Appendix B for applicable definitions and other information to inform this statement.</p>
<p>Team Description: Qualifications and Resources (Approximately 3 pages)</p> 	<p>The Team Description should include a description of the team members, resources being brought to bear, and key personnel qualifications.</p> <ul style="list-style-type: none"> • Describe the project team’s unique qualifications and expertise, including those of key subrecipients. Also describe the time commitment of the key team members to support the project. • Describe the technical services to be provided by DOE/NNSA FFRDCs, if applicable. • Describe the skills, certifications, or other credentials of the construction and ongoing operations workforce, if applicable. • Project Management: The applicant should discuss the team’s proposed management plan, including the following: <ul style="list-style-type: none"> ○ The overall approach and organization for managing the work. ○ The roles of each project team member. ○ How communications will be maintained among project team members. • For multi-organizational projects, describe succinctly: <ul style="list-style-type: none"> ○ The roles and the work to be performed by the Project Manager and senior/key personnel at the prime and sub levels; ○ Agreements between the applicant and sub-recipients; and ○ Process for making decisions and communication plans.

ii. Community Benefits Plan: Job Quality and Equity



The Community Benefits Plan: Job Quality and Equity (Community Benefits Plan or 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 job quality and workforce continuity 3) advancing diversity, equity, inclusion, and accessibility (DEIA); and 4) contributing to the Justice40 Initiative. The below sections set forth the Plan requirements for each of the foregoing goals. At the full application stage of the application process, the Community Benefits Plan should indicate the applicant’s intention to engage meaningfully with labor and community stakeholders on these goals, including the potential of entering into formal Workforce and Community Agreements.

The applicant’s Community Benefits Plan must include at least one SMART milestone per year in order to measure progress on the proposed actions. The Community Benefits Plan will be evaluated as part of the technical review process. If DOE selects a project, DOE will incorporate the Community Benefits Plan into the award and the recipient must implement its Community Benefits Plan as part of carrying out its project. Public transparency around the plan and SMART commitments is necessary for ensuring accountability. In addition, during the life of the DOE



award, DOE will evaluate the recipient’s progress, including as part of the quarterly reporting process.

The Community Benefits Plan should be approximately 5-12 pages. It must be submitted in PDF format using the following convention name for the title: “Control Number_LeadOrganization_CBenefits.” This Plan must address the technical review criterion titled, “Community Benefits Plan: Job Quality & Equity.” See Section V. of the FOA.

For additional information, see [Community Benefits Plan Frequently Asked Questions \(FAQs\) | Department of Energy](#).

1. Community and Labor Engagement: The Community Benefits Plan must describe the applicant’s actions to date and future plans to engage with stakeholders, such as labor unions, academic institutions, foundations, states, other local or Tribal governments, and community-based organizations that support or work with underserved communities, including Disadvantaged Communities as defined for purposes of the Justice40 Initiative. By facilitating community input, social buy-in, and accountability, such engagement can substantially reduce or eliminate stalls or slowdowns, litigation, and other risks associated with project implementation. Stakeholder engagement can also promote co-creation of important pieces of projects and can lead to long-lasting, meaningful partnerships.

Community and labor engagement should ideally lay the groundwork for the eventual negotiation of Workforce and Community Agreements, which could take the form of one or more kinds of negotiated agreements with communities, labor unions, or, ideally, both. Registered apprenticeship programs, labor-management training partnerships, quality pre-apprenticeship programs, card check neutrality, and local and targeted hiring goals are all examples of provisions that Workforce and Community Agreements could cover that would increase the success of a DOE-funded project.

Applicants should also provide Community and Labor Partnership Documentation (See section IV.D.v. below) from representative organizations reflecting substantive engagement and feedback on applicant’s approach to community benefits including job quality and workforce continuity; diversity, equity, inclusion, and accessibility; and the Justice40 Initiative detailed below.

2. Investing in Job Quality and Workforce Continuity: A well-qualified, skilled, and trained workforce is necessary to ensure project stability, continuity, and success, and to meet program goals. High-quality jobs are critical to attracting and retaining the qualified workforce required.



The Plan must describe the applicant’s approach to investing in workforce education and training of both new and incumbent workers and ensuring jobs are of sufficient quality to attract and retain skilled workers in the industry.

This section of the Community Benefits plan should contain specific components describing Job Quality and Workforce as described below according to the applicant’s Track:

For Track 1 proposals:

- A) A summary of the applicants’ plan to assess and address the local clean energy workforce needs into the proposal.
- B) If selected for an award under this FOA, the applicant shall further investigate the clean energy workforce needs and opportunities in the community, and host at least one stakeholder meeting on the topic. Prior to the end of the first performance period, the applicant shall deliver in writing a summary of the workforce development stakeholder meeting(s), including the workforce training or retraining, recruitment, and entrepreneurship opportunities and challenges brought by the clean energy economy to the communities in the project.

For Track 2 proposals:

- A) A summary of the applicant’s plan to attract, train, and retain a skilled and well-qualified workforce for both construction *and* ongoing operations/production activities. A collective bargaining agreement, labor-management partnership, or other similar agreement would provide evidence of such a plan. Alternatively, applicants may describe:
 - i. wages, benefits, and other worker supports to be provided benchmarking against prevailing wages for construction and local median wages for other occupations;
 - ii. commitments to invest in workforce education and training, including measures to reduce attrition, increase productivity from a committed and engaged workforce, and support the development of a resilient, skilled, and stable workforce for the project; and
 - iii. efforts to engage employees in the design and execution of workplace safety and health plans.
- B) A description of employees’ ability to organize, bargain collectively, and participate, through labor organizations of their choosing, in decisions that affect them contributes to the effective conduct of business and facilitates amicable settlements of any potential disputes between employees and employers, providing assurances of project efficiency,



continuity, and multiple public benefits. In the description, explain whether workers can form and join unions of their choosing, and how they will have the opportunity to organize with the purposes of exercising collective voice in the workplace.

3. DEIA: The Community Benefits Plan must include a section describing how diversity, equity, inclusion, and accessibility (DEIA) objectives will be incorporated into the 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 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 Owned Enterprises, Minority Owned Businesses, Woman Owned Businesses, and Veteran Owned Businesses for contractor support needs;
- B) To fill open positions for the DOE-funded project, partner 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. In addition, applicants should consider providing comprehensive support services to increase representation and access in project's construction and operations jobs.

4. Justice40 Initiative: All applicants must provide an overview of benefits to communities, including disadvantaged communities, that the project can deliver, supported by measurable milestones. Specifically, the Justice40 Initiative section must include:

1. Identification of communities to which the anticipated project benefits will flow, including any disadvantaged communities identified by federal tools. (DOE recognizes disadvantaged communities as defined and identified by the White House Council of Environmental Quality's Climate and Economic Justice Screening Tool (CEJST), which can be located at <https://screeningtool.geoplatform.gov/>.)
2. 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.

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 project will maximize all of the benefits listed in #4.

3. A description of how and when anticipated benefits are expected to flow to communities and disadvantaged communities. For example, will the benefits be provided directly within the disadvantaged community(ies) identified in the 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 applicants track benefits delivered?
4. A discussion of anticipated negative and cumulative environmental impacts on communities and disadvantaged communities. Are there anticipated negative or positive environmental impacts associated with the project, and how will the applicant mitigate any negative impacts? Within the context of cumulative impacts created by the project, applicants should use the Environmental Protection Agency EJSCREEN tool to quantitatively discuss existing environmental impacts in the project area. See [EJScreen: Environmental Justice Screening and Mapping Tool | US EPA](#).

For projects funded under this FOA, DOE will provide specific reporting guidance for the benefits described above.

iii. Budget Information

Complete all required fields in the template provided on S3 Exchange under “Full Application Attachments.” Save the file using the following convention for the title “ControlNumber_LeadOrganization_Budget”.

iv. Letters of Commitment

Submit letters of commitment from the Mayor, County Manager, Tribal leader or the highest-level official, or designee, from the prime applicant government, explaining which agencies will be participating in the proposed project, and the level of official support for the project.

Applicants must also submit letters of commitment from all team members, or subrecipients. If subrecipients are providing cost share, letters of commitment may state that the third party is committed to providing a specific minimum dollar amount or value of in-kind contributions allocated to cost sharing. The following information for each third party contributing to cost



sharing should be identified: (1) the name of the organization; (2) the proposed dollar amount to be provided; and (3) the proposed cost sharing type – (cash-or in-kind contributions). Each letter must not exceed 1 page.

Save the letters of commitment in a single PDF file using the following convention for the title “ControlNumber_LeadOrganization_LOCs”.

Letters of support or endorsement for the project from entities that do not have a substantive role in the project are not accepted.

v. Community Partnership Documentation

In support of the Community Benefits Plan, applicants may submit documentation to demonstrate existing or planned partnerships with community entities, such as, organizations that work with local stakeholders most vulnerable to or affected by the project, such as organizations that carry out workforce development programs, labor unions, Tribal organizations, and community-based organizations that work with disadvantaged communities. The partnership documentation could be in the form of a letter on the partner’s letterhead outlining the planned partnership signed by an officer of the entity, a Memorandum of Understanding, or other similar agreement. Such letters must state the specific nature of the partnership and must not be general letters of support. If the applicant intends to enter into Workforce and Community Agreements as part of the Community Benefits Plan, please include letters from proposed partners as appropriate. Each letter must not exceed 1 page. In total, the partnership documentation must not exceed 10 pages. Save the partnership documentation in a single PDF file using the following convention for the title “ControlNumber_LeadOrganization_PartnerDoc”.

vi. SF-424: Application for Federal Assistance

Complete all required fields in accordance with the instructions on the form. The list of certifications and assurances in Field 21 can be found at <http://energy.gov/management/office-management/operational-management/financial-assistance/financial-assistance-forms>, under Certifications and Assurances. Note: The dates and dollar amounts on the SF-424 are for the complete project period and not just the first project year, first phase or other subset of the project period. Save the SF-424 in a single file using the following convention for the title “ControlNumber_LeadOrganization_424”.

vii. Summary for Public Release

Applicants must submit a one-page summary of their project that is suitable for dissemination to the public. It should be a self-contained document that identifies the name of the applicant, the lead project manager, the project title, the objectives of the project, a description of the project, including methods to be employed, the potential impact of the project (e.g., benefits, outcomes), major participants (for collaborative projects), and the project’s commitments and



goals described in the Community Benefits Plan. This document must not include any proprietary or sensitive business information as DOE may make it available to the public after selections are made. The summary must not exceed 1 page when printed using standard 8.5 x 11 paper with 1" margins (top, bottom, left, and right) with font not smaller than 12 point. Save the Summary for Public Release in a single PDF file using the following naming convention "ControlNumber_LeadOrganization_Summary".

viii. Summary Slide

Applicants must provide a single slide summarizing the proposed project. The Summary Slide template must include the following information:

- Project title, prime applicant organization name and subrecipient organizations/team members, and any partners
- Requested DOE funds, as assigned to prime applicant and subrecipients, if applicable; and proposed applicant cost share, if applicable.
- A project summary;
- A description of the proposal's impact;
- Proposed project goals;
- Any key graphics (illustrations, charts and/or tables);
- The project's key takeaway idea; and
- Topline community benefits.

See the summary slide template on S3 Exchange for your reference. Use of the template is optional. Save the Summary Slide in a single Microsoft Powerpoint file using the following convention for the title "ControlNumber_LeadOrganization_Slide".

ix. SF-LLL: Disclosure of Lobbying Activities

Recipients and subrecipients may not use any federal funds to influence or attempt to influence, directly or indirectly, congressional action on any legislative or appropriation matters.

Recipients and subrecipients are required to complete and submit SF-LLL, "Disclosure of Lobbying Activities" (<https://www.grants.gov/web/grants/forms/sf-424-individual-family.html>) to ensure that non-federal funds have not been paid and will not be paid to any person for influencing or attempting to influence any of the following in connection with the application:

- An officer or employee of any federal agency;
- A member of Congress;
- An officer or employee of Congress; or
- An employee of a member of Congress.



Save the SF-LLL in a single PDF file using the following convention for the title “ControlNumber_LeadOrganization_SF-LLL”.

x. Budget for National lab partner (DOE/NNSA FFRDC) (if applicable)

If a DOE/NNSA FFRDC is to perform a portion of the work, the applicant must provide a DOE WP in accordance with the requirements in DOE Order 412.1A, Work Authorization System, Attachment 3, available at: <https://www.directives.doe.gov/directives-documents/400-series/0412.1-BOrder-a-chg1-AdmChg> Save the WP in a single PDF file using the following convention for the title “ControlNumber_LeadOrganization_WP”.

xi. Authorization for National Lab - non-DOE/NNSA or DOE/NNSA FFRDCs (if applicable)

The federal agency sponsoring the FFRDC must authorize in writing the use of the FFRDC on the proposed project and this authorization must be submitted with the application. The use of a FFRDC must be consistent with the contractor’s authority under its award. Save the Authorization in a single PDF file using the following convention for the title “ControlNumber_LeadOrganization_FFRDCAuth”.

E. Post Selection Information Requests

If selected for award negotiations, DOE reserves the right to require that selected applicants provide additional or clarifying information regarding the application submissions, the project, the project team, the award requirements, and any other matters related to anticipated award. The following items will be required:

i. Statement of Project Objectives (SOPO)

Applicants are required to complete a SOPO. A SOPO template is available on S3 Exchange at <https://infrastructure-exchange.energy.gov/>. The SOPO, including the Milestone Table, should be approximately 4-6 pages when printed using standard 8.5 x 11 paper with 1” margins (top, bottom, left, and right) with font not smaller than 12 point (except in figures or tables, which may be 10 point font). Save the SOPO in a single Microsoft Word file using the following convention for the title “ControlNumber_LeadOrganization_SOPO”.

ii. Full Budget Justification Workbook

Applicants must complete the Budget Justification Workbook, which is available on S3 Exchange at <https://infrastructure-exchange.energy.gov/>. Applicants must complete each tab of the Budget Justification Workbook for the project as a whole, including all work to be performed by the prime recipient and its subrecipients and contractors. Applicants should include costs



associated with implementing the various BIL-specific requirements (e.g., Buy America requirements for infrastructure projects, Davis Bacon, Community Benefits Plan, reporting, oversight) and with required annual audits and incurred cost proposals in their proposed budget documents. Such costs may be reimbursed as a direct or indirect cost. The “Instructions and Summary” included with the Budget Justification Workbook will auto-populate as the applicant enters information into the Workbook. Applicants must carefully read the “Instructions and Summary” tab provided within the Budget Justification Workbook. Save the Budget Justification Workbook in a single Microsoft Excel file using the following convention for the title “ControlNumber_LeadOrganization_Budget_Justification”.

iii. Subrecipient Budget Justification (if applicable)

Applicants must provide a separate budget justification for each subrecipient that is expected to perform work estimated to be more than \$250,000 or 25 percent of the total work effort (whichever is less). The budget justification must include the same justification information described in the “Budget Justification” section above. Save each subrecipient budget justification in a Microsoft Excel file using the following convention for the title “ControlNumber_LeadOrganization_Subrecipient_Budget_Justification”.

iv. Potentially Duplicate Funding Notice

If the applicant or project team member has other active awards of federal funds, the applicant must determine whether the activities of those awards potentially overlap with the activities set forth in its application to this FOA. If there is a potential overlap, the applicant must notify DOE in writing of the potential overlap and state how it will ensure any project funds (i.e., recipient cost share and federal funds) will not be used for identical cost items under multiple awards. Likewise, for projects that receive funding under this FOA, if a recipient or project team member receives any other award of federal funds for activities that potentially overlap with the activities funded under the DOE award, the recipient must promptly notify DOE in writing of the potential overlap and state whether project funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under the DOE award. If there are identical cost items, the recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

Save the Potentially Duplicative Funding Notice in a single PDF file using the following convention for the title “PDFN.pdf.”

v. Cybersecurity Plan

In accordance with BIL section 40126, applicants selected for award negotiations must submit an acceptable cybersecurity plan to DOE prior to receiving funding.¹⁷

¹⁷ 42 U.S.C. § 18725



Cybersecurity plans are intended to foster a cybersecurity-by-design approach for BIL efforts. The Department will also use these plans to ensure effective integration and coordination across its research, development, and demonstration programs. A cybersecurity plan is NOT required as part of the application submission for this FOA, but all projects selected under this FOA will be required to submit a cybersecurity plan during the award negotiation phase. This means applicants need not submit a cybersecurity plan until they receive notice that their application has been selected by DOE. SCEP encourages applicants to begin preparing their cybersecurity plans during or shortly after the full application process.

The Department recommends using open guidance and standards such as the National Institute of Standards and Technology's (NIST) Cybersecurity Framework (CSF) and the DOE Cybersecurity Capability Maturity Model (C2M2).¹⁸ The cybersecurity plan created pursuant to BIL section 40126 should document any deviation from open standards, as well as the utilization of proprietary standards where the awardee determines that such deviation is necessary.

- Cybersecurity plans should be commensurate to the threats and vulnerabilities associated with the proposed efforts and demonstrate the cybersecurity maturity of the project.
- Cybersecurity plans may cover a range of topics relevant to the proposed project, e.g., software development lifecycle, third-party risks, and incident reporting.
- At a minimum, cybersecurity plans should address questions noted in BIL section 40126 (b) 'Contents of Cybersecurity Plan'.¹⁹

A draft version of supplementary guidance on the cybersecurity plan requirement will be available at <https://www.energy.gov/ceser/bipartisan-infrastructure-law-implementation>.

Additional information may also be required of applicants that are selected to proceed with award negotiations. The following is a non-exhaustive list of examples of additional information that may be required:

¹⁸ NERC critical infrastructure protection (CIP) standards for entities responsible for the availability and reliability of the bulk electric system. NIST IR 7628: 2 Smart grid cyber security strategy and requirements. NIST SP800-53, Recommended Security Controls for Federal Information Systems and Organizations: Catalog of security controls in 18 categories, along with profiles for low-, moderate-, and high-impact systems. NIST SP800-82, Guide to Industrial Control Systems (ICS) Security. NIST SP800-39, Integrated Enterprise-Wide Risk Management: Organization, mission, and information system view. AMI System Security Requirements: Security requirements for advanced metering infrastructure. ISO (International Organization for Standardization) 27001, Information Security Management Systems: Guidance on establishing governance and control over security activities (this document must be purchased). IEEE (Institute of Electrical and Electronics Engineers) 1686-2007, Standard for Substation Intelligent Electronic Devices (IEDs) Cyber Security Capabilities (this document must be purchased). DOE Cybersecurity Capability Maturity Model (C2M2).

¹⁹ 42 U.S.C. § 18725



SCEP

STATE & COMMUNITY ENERGY PROGRAMS

-
- Indirect cost information;
 - Additional budget details;
 - Letters of Commitment from third parties contributing to cost share, if applicable;
 - Name and phone number of the Designated Responsible Employee for complying with national policies prohibiting discrimination (See 10 CFR 1040.5);
 - Information for the DOE Office of Civil Rights to process assurance reviews under 10 CFR 1040;
 - Representation of Limited Rights Data and Restricted Software, if applicable;
 - Information related to Davis-Bacon Act Requirements;
Information related to any proposed Workforce and Community Agreement, as defined above in "Community Benefits Plan: Job Quality and Equity," that applicants may have made with the relevant community; and
 - Environmental Questionnaire



F. Unique Entity Identifier (UEI) and System for Award Management (SAM)

Each applicant (unless the applicant is an individual or federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the federal awarding agency under 2 CFR 25.110(d)) is required to: (1) Be registered in the SAM at <https://www.sam.gov> before submitting its application; (2) provide a valid UEI number in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. DOE may not make a federal award to an applicant until the applicant has complied with all applicable UEI and SAM requirements and, if an applicant has not fully complied with the requirements by the time DOE is ready to make a federal award, the DOE will determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

NOTE: Due to the high demand of UEI requests and SAM registrations, entity legal business name and address validations are taking longer than expected to process. Entities should start the UEI and SAM registration process as soon as possible. If entities have technical difficulties with the UEI validation or SAM registration process they should utilize the [HELP](#) feature on [SAM.gov](#). SAM.gov will work entity service tickets in the order in which they are received and asks that entities not create multiple service tickets for the same request or technical issue. Additional entity validation resources can be found here: [GSAFSD Tier 0 Knowledge Base - Validating your Entity](#).

G. Submission Dates and Times

All required submissions must be submitted in S3 Exchange no later than 5 p.m. ET on the dates provided on the cover page of this FOA.

H. Intergovernmental Review

This FOA may be 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 comply with, the state's processes under Executive Order 12372. The deadline for Intergovernmental Review is February 15, 2023.



I. Funding Restrictions

i. Allowable Costs

All expenditures must be allowable, allocable, and reasonable in accordance with the applicable federal cost principles. Pursuant to 2 CFR 910.352, the cost principles in the Federal Acquisition Regulations (48 CFR 31.2) apply to for-profit entities. The cost principles contained in 2 CFR Part 200, Subpart E apply to all entities other than for-profits.

ii. Pre-Award Costs

Applicants selected for award negotiations (selectee) must request prior written approval to charge pre-award costs. Pre-award costs are those incurred prior to the effective date of the federal award directly pursuant to the negotiation and in anticipation of the federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the federal award and **only** with the written approval of the federal awarding agency, through the DOE Contracting Officer.

Pre-award costs cannot be incurred prior to the Selection Official signing the Selection Statement and Analysis.

Pre-award expenditures are made at the selectee's risk. DOE is not obligated to reimburse costs: (1) in the absence of appropriations; (2) if an award is not made; or (3) if an award is made for a lesser amount than the selectee anticipated.

1. National Environmental Policy Act (NEPA) Requirements Related to Pre-Award Costs

DOE's decision whether and how to distribute federal funds under this FOA is subject to NEPA. Applicants should carefully consider and should seek legal counsel or other expert advice before taking any action related to the proposed project that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE completing the NEPA review process.

DOE does not guarantee or assume any obligation to reimburse pre-award costs incurred prior to receiving written authorization from the Contracting Officer. If the applicant elects to undertake activities that DOE determines may have an adverse effect on the environment or limit the choice of reasonable alternatives prior to receiving such written authorization from the Contracting Officer, the applicant is doing so at risk of not receiving federal funding for their project and such costs may not be recognized as allowable cost share. Nothing contained in the pre-award cost reimbursement regulations or any pre-award costs approval letter from the Contracting Officer override the requirement to obtain the written authorization from the Contracting Officer prior to taking any action that may have an adverse effect on the



environment or limit the choice of reasonable alternatives. Likewise, if an application is selected for negotiation of award, and the prime recipient elects to undertake activities that are not authorized for federal funding by the Contracting Officer in advance of DOE completing a NEPA review, the prime recipient is doing so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.

iii. Performance of Work in the United States (Foreign Work Waiver)

1. Requirement

All work performed under awards issued under this FOA must be performed in the United States. The prime recipient must flow down this requirement to its subrecipients.

2. Failure to Comply

If the prime recipient fails to comply with the Performance of Work in the United States requirement, DOE may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable recipient cost share. The prime recipient is responsible should any work under this award be performed outside the United States, absent a waiver, regardless of whether the work is performed by the prime recipient, subrecipients, contractors or other project partners.

3. Waiver

To seek a foreign work waiver, the applicant must submit a written waiver request to DOE. Appendix A lists the information that must be included in a request for a foreign work waiver.

Save the waiver request(s) in a single PDF file. The applicant does not have the right to appeal DOE's decision concerning a waiver request.

iv. Construction

Recipients are required to obtain written authorization from the Contracting Officer before incurring any major construction costs.

v. Foreign Travel

Foreign travel costs are not allowable under this FOA.

vi. Equipment and Supplies

Property disposition may be required at the end of a project if the current fair market value of property exceeds \$5,000. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310 – 200.316.



vii. Buy America Requirements for Infrastructure Projects

Pursuant to the Build America Buy America Act, subtitle IX of BIL (Buy America, or “BABA”), federally assisted projects that 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 BIL, and whether the infrastructure in question is publicly owned or serves a public function.

Applicants are strongly encouraged to consult Appendix B of this FOA to determine whether their project may have to apply this requirement, both to make an early determination as to the need of a waiver, as well as to determine what impact, if any, this requirement may have on the proposed project’s budget.

Please note that, based on implementation guidance from the Office of Management and Budget (OMB) issued on April 18, 2022, the Buy America requirements of the BIL 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 “non-Federal entity,” e.g., a State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization. Subawards should conform to the terms of the prime award from which they flow; in other words, for-profit prime recipients are not required to flow down these Buy America requirements to subrecipients, even if those subrecipients are non-Federal entities as defined above. Conversely, prime recipients which are non-Federal entities must flow the Buy America requirements down to all subrecipients, even if those subrecipients are for-profit entities. Finally, 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 Full Applications to select for award negotiations that considers whether the applicant has made a commitment to procure U.S. iron, steel, manufactured products, and construction materials in its project.

The DOE financial assistance agreement 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.



Applicants may seek waivers of these requirements in very limited circumstances and for good cause shown. Further details on requesting a waiver can be found in Appendix B and the terms and conditions of an award.

Applicants are strongly encouraged to consult Appendix B for more information.

viii. Davis-Bacon Act Requirements

Projects awarded under this FOA will be funded under Division D of the Bipartisan Infrastructure Law. Accordingly, per Section 41101 of that law, all laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work funded in whole or in part under this FOA shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the “Davis-Bacon Act” (DBA).

Applicants shall provide written assurance acknowledging the DBA requirements above, and confirming that the laborers and mechanics performing construction, alteration, or repair work on projects funded in whole or in part by awards made as a result of this FOA are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

Applicants acknowledge that they will comply with all of the Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
- (2) ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from contracts and subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.
- (3) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (4) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.



(5) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the United States Department of Labor (“DOL”) upon request, as required by 29 CFR 5.6(a)(2).

(6) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.

(7) cooperating with any authorized representative of the DOL in their inspection of records, interviews with employees, and other actions undertaken as part of a DOL investigation.

(8) posting in a prominent and accessible place the wage determination(s) and DOL Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(9) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR Parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; DOL investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(10) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>), its successor system, or other manner of compliance as directed by the Contracting Officer.

Recipients of funding under this FOA will also be required to undergo Davis-Bacon Act compliance training and to maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The DOL offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.



ix. Lobbying

Recipients and subrecipients may not use any federal funds to influence or attempt to influence, directly or indirectly, congressional action on any legislative or appropriation matters.

Recipients and subrecipients are required to complete and submit SF-LLL, “Disclosure of Lobbying Activities” (<https://www.grants.gov/web/grants/forms/sf-424-individual-family.html>) to ensure that non-federal funds have not been paid and will not be paid to any person for influencing or attempting to influence any of the following in connection with the application:

- An officer or employee of any federal agency;
- A Member of Congress;
- An officer or employee of Congress; or
- An employee of a Member of Congress.

x. Risk Assessment

Pursuant to 2 CFR 200.206, DOE will conduct an additional review of the risk posed by applications submitted under this FOA. Such risk assessment will consider:

1. Financial stability;
2. Quality of management systems and ability to meet the management standards prescribed in 2 CFR 200 as amended and adopted by 2 CFR 910;
3. History of performance;
4. Audit reports and findings; and
5. The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-federal entities.

DOE may make use of other publicly available information and the history of an applicant’s performance under DOE or other federal agency awards.

Depending on the severity of the findings and whether the findings were resolved, DOE may elect not to fund the applicant.

In addition to this review, DOE must comply with the guidelines on government-wide suspension and debarment in 2 CFR Part 180, and must require non-federal entities to comply with these provisions. These provisions restrict federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal programs or activities.

Further, as DOE invests in critical infrastructure and funds critical and emerging technology areas, DOE also considers possible vectors of undue foreign influence in evaluating risk. If high



risks are identified and cannot be sufficiently mitigated, DOE may elect to not fund the applicant.

xi. Invoice Review and Approval

DOE employs a risk-based approach to determine the level of supporting documentation required for approving invoice payments. Recipients may be required to provide some or all of the following items with their requests for reimbursement:

- Summary of costs by cost categories;
- Timesheets or personnel hours report;
- Proof of compliance with Davis-Bacon and electronic submittals of certified payroll reports;
- Invoices/receipts for all travel, equipment, supplies, contractual, and other costs;
- UCC filing proof for equipment acquired with project funds by for-profit recipients and subrecipients;
- Explanation of cost share for invoicing period;
- Analogous information for some subrecipients; and
- Other items as required by DOE.

xii. Affirmative Action and Pay Transparency Requirements

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

- (1) Recipients are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients must take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients and contractors.
- (3) Recipients are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule compliance evaluations. OFCCP's Technical Assistance



Guide²⁰ should be consulted to gain an understanding of the requirements and possible required actions.

xiii. Foreign Collaboration Considerations

- a. Consideration of new collaborations with foreign organizations and governments. The recipient will be required to provide DOE with advanced written notification of any potential collaboration with foreign organizations or governments in connection with its DOE-funded award scope. The recipient will then be required to await further guidance from DOE prior to contacting the proposed foreign organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- b. Existing collaborations with foreign organizations and governments. The recipient will be required to provide DOE with a written list of all existing foreign collaborations that have entered in connection with its DOE-funded award scope.
- c. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the DOE award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the DOE award but resulting in provision of a thing of value from or to the DOE award must also be reported. Collaborations do not include routine workshops, conferences, use of the recipient's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access,

²⁰ See OFCCP's Technical Assistance Guide at: <https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec> Also see the National Policy Assurances <http://www.nsf.gov/awards/managing/rtc.jsp>



or the routine use of foreign facilities by awardee staff in accordance with the recipient's standard policies and procedures.

V. Application Review Information

A. Technical Review Criteria

i. Concept Papers

Concept papers will be evaluated against the criterion shown below.

Concept Paper Criterion #1: Overall FOA responsiveness (100%)

This criterion involves consideration of the following factors:



- Project Impact

Impact on near term and long-term greenhouse gas emissions, fossil fuel use, and/or energy use; and/or increase in the use of clean energy



- Community Engagement and Benefits

- Planned or completed community engagement strategy
- Additional benefits to the community(ies), such as economic opportunities, job creation/retention, energy cost reduction, improved energy reliability, and/or positive health outcomes



- Viability of Plan and Strength of Team

- Technically feasibility, financial viability, and support from the local government or Tribal leadership
- The applicant, including all team members and partners, has the qualifications, experience, capabilities, and other resources necessary to complete the proposed project
- Whether the proposal includes a community located in one of the priority states or territories, as described on pages 3-4.

ii. Full Applications

Applications will be evaluated against the technical review criteria shown below.



Criterion 1: Overall FOA Responsiveness and Impact (40%)

- Extent to which the proposed approach reduces greenhouse gas emissions, fossil fuel use, and/or energy use, or increases the use of clean energy, both in the near term and long term



- Extent to which DOE assistance will materially and substantially impact the outcome of the proposed effort and result in sustained positive impact to the community(ies)
- Extent to which the project and project outcomes can be model approaches for other communities to replicate



Criterion 2: Community Benefits and Engagement (30%)

- Extent to which the proposal would benefit large numbers of community residents or other stakeholders in significant direct and measurable ways, particularly residents of disadvantaged communities (E.g. Reduced energy burden reduction; local jobs retained or created, increased public participation in energy decisions, positive health outcomes etc.)
- Extent to which the proposed project includes an effective plan to engage the community and/or has already been identified as a priority for community stakeholders through a previous engagement process
- Extent to which the proposal will lead to the delivery of high-quality jobs and includes specific and high-quality actions to meet DEIA goals; and
- *Track 2 only:* Quality of any partnerships and agreements with apprenticeship readiness programs, or community-based workforce training and support organizations serving workers facing systematic barriers to employment to facilitate participation in the project's construction and operations.



Criterion 3: Viability of Plan & Strength of Team (30%)

- Extent to which the proposal provides an effective strategy to address key challenges including a strong plan to measure outcomes
- Extent to which the proposed project approach is technically feasible; includes a reasonable budget and spend plan; and has support from the local government or Tribal leadership
- Extent to which the team has the skills and a demonstrated track record for the applicant to be successful, including grant management experience, project management experience, technical expertise, and facilitation and convening experience



- Extent to which the proposed approach is likely to build organizational and/or staff capacity to support further advancement of clean energy deployment and/or support the community(ies) participation in the clean energy economy
- Whether the application includes a community located in a priority state or territory, as described on pages 3-4.

B. Standards for Application Evaluation

Applications that are determined to be eligible will be evaluated in accordance with this FOA, by the standards set forth in DOE’s Notice of Objective Merit Review Procedure (76 Fed. Reg. 17846, March 31, 2011) and the guidance provided in the “DOE Merit Review Guide for Financial Assistance,” effective October 2021, which is available at: [DEPARTMENT OF ENERGY GUIDE TO FINANCIAL ASSISTANCE October 2021](#)

C. Other Selection Factors

i. Program Policy Factors

In addition to the above criteria, the Selection Official may consider the following program policy factors in determining which Full Applications to select for award negotiations:

- The degree to which the proposed project collectively represents diverse types and sizes of applicant organizations.
- The degree to which the proposed project has broad public support from the communities most directly impacted by the project.
- The degree to which the proposed project exhibits diversity in terms of geographic distribution, approach, or technology when compared to the existing DOE project portfolio and other projects selected from the subject FOA;
- The degree to which the proposed project, including proposed cost share, optimizes the use of available DOE funding to achieve programmatic objectives;
- The degree to which the proposed project incorporates applicant or team members from Minority Serving Institutions (e.g., Historically Black Colleges and Universities (HBCUs)/Other Minority Serving Institutions); and partnerships with Minority Business Enterprises, Minority Owned Businesses, Woman Owned Businesses, Veteran Owned Businesses, or Tribal nations; and
- The degree to which the proposed project will employ procurement of U.S. iron, steel, manufactured products, and construction materials.



D. Evaluation and Selection Process

i. Overview

The evaluation process consists of multiple phases; each includes an initial eligibility review and a thorough technical review. Rigorous technical reviews of eligible submissions are conducted by reviewers that are experts in the subject matter of the FOA. Ultimately, the Selection Official considers the recommendations of the reviewers, along with other considerations such as program policy factors, in determining which applications to select.

ii. Pre-Selection Clarification

DOE may determine that pre-selection clarifications are necessary from one or more applicants. Pre-selection clarifications are distinct from and less formal than pre-selection interviews. These pre-selection clarifications will solely be for the purposes of clarifying the application. The pre-selection clarifications may occur before, during or after the merit review evaluation process. Information provided by an applicant that is not necessary to address the pre-selection clarification question will not be reviewed or considered. Typically, a pre-selection clarification will be carried out through either written responses to DOE's written clarification questions or video or conference calls with DOE representatives.

The information provided by applicants to DOE through pre-selection clarifications is incorporated in their applications and contributes to the merit review evaluation and DOE's selection decisions. If DOE contacts an applicant for pre-selection clarification purposes, it does not signify that the applicant has been selected for negotiation of award or that the applicant is among the top ranked applications.

DOE will not reimburse applicants for expenses relating to the pre-selection clarifications, nor will these costs be eligible for reimbursement as pre-award costs.

iii. Recipient Integrity and Performance Matters

DOE, prior to making a federal award with a total amount of federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the [Federal Awardee Performance and Integrity Information System \(FAPIIS\)](#)) (see 41 U.S.C. § 2313).

The applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.



DOE will consider any written comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

iv. Selection

The Selection Official may consider the technical merit, the Federal Consensus Board's recommendations, program policy factors, and the amount of funds available in arriving at selections for this FOA.

E. Anticipated Notice of Selection and Award Negotiation Dates

SCEP anticipates notifying applicants selected for negotiation of award and negotiating awards by the dates provided on the cover page of this FOA.

VI. Award Administration Information

A. Award Notices

i. Ineligible Submissions

Ineligible Concept Papers and Full Applications will not be further reviewed or considered for award. The Contracting Officer will send a notification letter by email to the technical and administrative points of contact designated by the applicant in S3 Exchange. The notification letter will state the basis upon which the Concept Paper or the Full Application is ineligible and not considered for further review.

ii. Concept Paper Notifications

DOE will notify applicants of its determination to encourage or discourage the submission of a Full Application. DOE will post these notifications to S3 Exchange. DOE may include general comments provided from reviewers on an applicant's Concept Paper in the encourage/discourage notifications. Applicants will receive a control number upon submission of their Concept Paper, and should include that control number in the file name of their Full Application submission (i.e., Control number_Applicant Name_Full Application).

Applicants may submit a Full Application even if they receive a notification discouraging them from doing so. By discouraging the submission of a Full Application, DOE intends to convey its lack of programmatic interest in the proposed project. Such assessments do not necessarily reflect judgments on the merits of the proposed project. The purpose of the Concept Paper phase is to save applicants the considerable time and expense of preparing a Full Application that is unlikely to be selected for award negotiations.



iii. Full Application Notifications

DOE will notify applicants of its determination via a notification letter by email to the technical and administrative points of contact designated by the applicant in S3 Exchange. The notification letter will inform the applicant whether or not its Full Application was selected for award negotiations. Alternatively, DOE may notify one or more applicants that a final selection determination on particular Full Applications will be made at a later date, subject to the availability of funds or other factors.

iv. Successful Applicants

Receipt of a notification letter selecting a Full Application for award negotiations does not authorize the applicant to commence performance of the project. If an application is selected for award negotiations, it is not a commitment by DOE to issue an award. Applicants do not receive an award until award negotiations are complete and the Contracting Officer executes the funding agreement, accessible by the prime recipient in FedConnect.

The award negotiation process will take approximately 30-60 days. Applicants must designate a primary and a backup point-of-contact in S3 Exchange with whom DOE will communicate to conduct award negotiations. The applicant must be responsive during award negotiations (i.e., provide requested documentation) and meet the negotiation deadlines. If the applicant fails to do so or if award negotiations are otherwise unsuccessful, DOE will cancel the award negotiations and rescind the Selection. DOE reserves the right to terminate award negotiations at any time for any reason.

Please refer to Section IV.I.ii. of the FOA for guidance on pre-award costs.

v. Alternate Selection Determinations

In some instances, an applicant may receive a notification that its application was not selected for award and DOE designated the application to be an alternate. As an alternate, DOE may consider the Full Application for federal funding in the future. A notification letter stating the Full Application is designated as an alternate does not authorize the applicant to commence performance of the project. DOE may ultimately determine to select or not select the Full Application for award negotiations.



vi. Unsuccessful Applicants

DOE shall promptly notify in writing each applicant whose application has not been selected for award or whose application cannot be funded because of the unavailability of appropriated funds.

B. Administrative and National Policy Requirements

i. Registration Requirements

There are several one-time actions before submitting an application in response to this FOA, and it is vital that applicants address these items as soon as possible. Some may take several weeks, and failure to complete them could interfere with an applicant's ability to apply to this FOA, or to meet the negotiation deadlines and receive an award if the application is selected. These requirements are as follows:

1. S3 Exchange

Register and create an account on S3 Exchange at <https://infrastructure-exchange.energy.gov>. This account will then allow the user to register for any open Infrastructure FOAs that are currently in S3 Exchange. It is recommended that each organization or business unit, whether acting as a team or a single entity, use only one account as the contact point for each submission. Applicants should also designate backup points of contact so they may be easily contacted if deemed necessary. **This step is required to apply to this FOA.** The S3 Exchange registration does not have a delay; however, **the remaining registration requirements below could take several weeks to process and are necessary for a potential applicant to receive an award under this FOA.**

2. System for Award Management

Register with the SAM at <https://www.sam.gov>. Designating an Electronic Business Point of Contact (EBiz POC) and obtaining a special password called a Marketing Partner ID Number (MPIN) are important steps in SAM registration. Please update your SAM registration annually.

3. FedConnect

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

4. Grants.gov

Register in Grants.gov (<http://www.grants.gov>) to receive automatic updates when Amendments to this FOA are posted. However, please note that Letters of Intent, Concept Papers, and Full Applications will not be accepted through Grants.gov.



5. Electronic Authorization of Applications and Award Documents

Submission of an application and supplemental information under this FOA through electronic systems used by the DOE, including S3 Exchange and FedConnect.net, constitutes the authorized representative's approval and electronic signature.

ii. Award 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.

iii. Foreign National Participation

All applicants selected for an award under this FOA and project participants (including subrecipients and contractors) who anticipate involving foreign nationals in the performance of an award, may be required to provide DOE with specific information about each foreign national to satisfy requirements for foreign national participation. A "foreign national" is defined as any person who is not a United States citizen by birth or naturalization. The volume and type of information collected may depend on various factors associated with the award. DOE concurrence may be required before a foreign national can participate in the performance of any work under an award.

DOE may elect to deny foreign national's participation in the award. Likewise, DOE may elect to deny a foreign national's access to DOE sites, information, technologies, equipment, programs or personnel.

iv. Subaward and Executive Reporting

Additional administrative requirements necessary for DOE grants and cooperative agreements to comply with the Federal Funding and Transparency Act of 2006 (FFATA) are contained in 2 CFR Part 170. Prime recipients must register with the new FFATA Subaward Reporting System database and report the required data on their first tier subrecipients. Prime recipients must report the executive compensation for their own executives as part of their registration profile in SAM.

v. National Policy Requirements

The National Policy Assurances that are incorporated as a term and condition of award are located at: <http://www.nsf.gov/awards/managing/rtc.jsp>.

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

DOE's decision whether and how to distribute federal funds under this FOA is subject to NEPA (42 U.S.C. § 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 additional background on NEPA, please see DOE’s NEPA website, at <https://www.energy.gov/nepa>.

While NEPA compliance is a federal agency responsibility and the ultimate decisions remain with the federal agency, all recipients selected for an award will be required to assist in the timely and effective completion of the NEPA process in the manner most pertinent to their proposed project. If DOE determines certain records must be prepared to complete the NEPA review process (e.g., biological evaluations or environmental assessments), the recipient may be required to prepare the records and the costs to prepare the necessary records may be included as part of the project costs.

vii. Applicant Representations and Certifications

1. Lobbying Restrictions

By accepting funds under this award, the prime recipient agrees 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.

2. Corporate Felony Conviction and Federal Tax Liability Representations

In submitting an application in response to this FOA, the applicant represents that:

- a.** It is **not** a corporation that has been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
- b.** It is **not** a corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

For purposes of these representations the following definitions apply:

A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.

3. Nondisclosure and Confidentiality Agreements Representations

In submitting an application in response to this FOA the applicant represents that:



- a. It **does not and will not** require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.

- b. It **does not and will not** use any federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:
 - (1) *“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling.”*

 - (2) The limitation above shall not contravene requirements applicable to Standard Form 312 Classified Information Nondisclosure Agreement (<https://fas.org/sgp/othergov/sf312.pdf>), Form 4414 Sensitive Compartmented Information Disclosure Agreement (<https://fas.org/sgp/othergov/intel/sf4414.pdf>), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

 - (3) Notwithstanding the provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States government. Such nondisclosure or confidentiality forms shall also



make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

viii. Statement of Federal Stewardship

DOE will exercise normal federal stewardship in overseeing the project activities performed under DOE awards. Stewardship Activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing assistance and/or temporary intervention in unusual circumstances to correct deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

ix. Statement of Substantial Involvement

DOE has substantial involvement in work performed under awards made as a result of this FOA. DOE does not limit its involvement to the administrative requirements of the award. Instead, DOE has substantial involvement in the direction and redirection of the technical aspects of the project as a whole. Substantial involvement includes, but is not limited to, the following:

1. DOE shares responsibility with the recipient for the management, control, direction, and performance of the project.
2. DOE may intervene in the conduct or performance of work under this award for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities.
3. DOE may redirect or discontinue funding the project based on the outcome of DOE's evaluation of the project at the Go/No-Go decision point(s).
4. DOE participates in major project decision-making processes.

x. Subject Invention Utilization Reporting

To ensure that prime recipients and subrecipients holding title to subject inventions are taking the appropriate steps to commercialize subject inventions, DOE may require that each prime recipient holding title to a subject invention submit annual reports for ten (10) years from the date the subject invention was disclosed to DOE on the utilization of the subject invention and efforts made by prime recipient or their licensees or assignees to stimulate such utilization. The reports must include information regarding the status of development, date of first commercial sale or use, gross royalties received by the prime recipient, and such other data and information as DOE may specify.



xi. 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>.

xii. Reporting

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

Additional reporting requirements apply to projects funded by BIL. As part of tracking progress toward key departmental goals – ensuring justice and equity, investing in the American workforce, boosting domestic manufacturing, reducing greenhouse gas emissions, and advancing a pathway to private sector deployment – DOE may require specific data collection. Examples of data that may be collected include:

- New manufacturing production, or recycling capacity
- Jobs data including
 - Number and types of jobs provided, wages and benefits paid
 - Demographics of workforce including local hires
 - Efforts to minimize risks of labor disputes and disruptions
 - Contributions to training; certificates and training credentials received by employees; ratio of apprentice-to-journey level workers employed
- Justice and Equity data, including:
 - Minority Business Enterprises, Minority Owned Businesses, Woman Owned Businesses and Veteran Owned Businesses acting as vendors and sub-contractors for bids on supplies, services and equipment.
 - Value, number, and type of partnerships with MSIs
 - Stakeholder engagement events, consent-based siting activities
 - Other relevant indicators from the Community Benefits Plan
- Number and type of energy efficient and clean energy equipment installed
- Funding leveraged, follow-on-funding, Intellectual Property (IP) Generation and IP Utilization

xiii. Conference Spending

The recipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant or cooperative agreement was awarded that would defray the cost to the United States government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States government would otherwise exceed \$20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to



the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

xiv. Uniform Commercial Code (UCC) Financing Statements

Per 2 CFR 910.360 (Real Property and Equipment) when a piece of equipment is purchased by a for-profit recipient or subrecipient with federal funds, and when the federal share of the financial assistance agreement is more than \$1,000,000, the recipient or subrecipient must:

Properly record, and consent to the Department's ability to properly record if the recipient fails to do so, UCC financing statement(s) for all equipment in excess of \$5,000 purchased with project funds. These financing statement(s) must be approved in writing by the Contracting Officer prior to the recording, and they shall provide notice that the recipient's title to all equipment (not real property) purchased with federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the government retains an undivided reversionary interest in the equipment. The UCC financing statement(s) must be filed before the Contracting Officer may reimburse the recipient for the federal share of the equipment unless otherwise provided for in the relevant financial assistance agreement. The recipient shall further make any amendments to the financing statements or additional recordings, including appropriate continuation statements, as necessary or as the Contracting Officer may direct.

xv. Implementation of Executive Order 13798, Promoting Free Speech and Religious Liberty

States, local governments, or other public entities may not condition sub-awards in a manner that would discriminate, or disadvantage sub-recipients based on their religious character.

xvi. Participants and Collaborating Organizations

If selected for award negotiations, the selected applicant must submit a list of key/senior personnel who are proposed to work on the project, both at the recipient and subrecipient level and a list of proposed collaborating organizations prior to award. Recipients will have an ongoing responsibility to notify DOE of changes to the key/senior personnel and collaborating organizations, and submit updated information during the life of the award.

xvii. U.S. Manufacturing Commitments

A primary objective of DOE's multi-billion dollar research, development, and demonstration investments is to cultivate new research and development ecosystems, manufacturing capabilities, and supply chains for and by United States industry and labor. Therefore, in exchange for receiving taxpayer dollars to support an applicant's project, the applicant must agree to a U.S. Competitiveness provision requiring that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Recipient can show to the satisfaction of DOE that



it is not commercially feasible. Award terms, including the specific U.S. Competitiveness Provision applicable to the various types of recipients and projects, are available at <https://www.energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>.

Please note that a subject invention is any invention conceived or first actually reduced to practice in performance of work under an award. An invention is any invention or discovery which is or may be patentable. The recipient includes any awardee, recipient, sub-awardee, or sub-recipient.

As noted in the U.S. Competitiveness Provision, if an entity cannot meet the requirements of the U.S. Competitiveness Provision, the entity may request a modification or waiver of the U.S. Competitiveness Provision. For example, the entity may propose modifying the language of the U.S. Competitiveness Provision in order to change the scope of the requirements or to provide more specifics on the application of the requirements for a particular technology. As another example, the entity may request that the U.S. Competitiveness Provision be waived in lieu of a net benefits statement or United States manufacturing plan. The statement or plan would contain specific and enforceable commitments that would be beneficial to the United States economy and competitiveness. Examples of such commitments could include manufacturing specific products in the United States, making a specific investment in a new or existing United States manufacturing facility, keeping certain activities based in the United States or supporting a certain number of jobs in the United States related to the technology. DOE may, in its sole discretion, determine that the proposed modification or waiver promotes commercialization and provides substantial United States economic benefits, and grant the request. If granted, DOE will modify the award terms and conditions for the requesting entity accordingly.

More information and guidance on the waiver and modification request process can be found in the DOE Financial Assistance Letter on this topic, available at <https://www.energy.gov/management/pf-2022-09-fal-2022-01-implementation-doe-determination-exceptional-circumstances-under>. Additional information on DOE's Commitment to Domestic Manufacturing for DOE-funded R&D is available at <https://www.energy.gov/gc/us-manufacturing>.

The U.S. Competitiveness Provision is implemented by DOE pursuant to a Determination of Exceptional Circumstances (DEC) under the Bayh-Dole Act and DOE Patent Waivers. See Section VIII.J. Title to Subject Inventions of this FOA for more information on the DEC and DOE Patent Waivers.



xviii. Interim Conflict of Interest Policy for Financial Assistance

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy)²¹ is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under the DOE financial assistance award. The term “Investigator” means the PI (or program manager) and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. Recipients must flow down the requirements of the interim COI Policy to any subrecipient non-federal entities. Further, for DOE funded projects, the recipient must include all unmanaged/unmanageable financial conflicts of interest (FCOI) in their initial and ongoing FCOI reports.

It is understood that non-federal entities and individuals receiving DOE financial assistance awards will need sufficient time to come into full compliance with DOE’s interim COI Policy. To provide some flexibility, DOE allows for a staggered implementation. Specifically, prior to award, applicants selected for award negotiations must: ensure all Investigators complete their significant financial disclosures; review the disclosures; determine whether a FCOI exists; develop and implement a management plan for FCOIs; and provide DOE with an initial FCOI report that includes all unmanaged/unmanageable FCOIs. Recipients will have 180 days from the date of the award to come into full compliance with the other requirements set forth in DOE’s interim COI Policy. Prior to award, the applicant must certify that it is, or will be within 180 days of the award, compliant with all requirements in the COI Policy.

xix. Fraud, Waste and Abuse

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of the Department’s programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of DOE activities to include grants, cooperative agreements, loans, and contracts.

The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

Additionally, recipients of DOE awards must be cognizant of the requirements of [2 CFR 200.113 Mandatory disclosures](#), which states:

²¹ DOE’s interim COI Policy can be found at [PF 2022-17 FAL 2022-02 Department of Energy Interim Conflict of Interest Policy Requirements for Financial Assistance](#).



The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in [2 CFR 200.339](#). (See also [2 CFR part 180](#), [31 U.S.C. § 3321](#), and [41 U.S.C. § 2313](#).) [[85 FR 49539](#), Aug. 13, 2020]

Applicants and subrecipients (if applicable) are encouraged to allocate sufficient costs in the project budget to cover the costs associated for personnel and data infrastructure needs to support performance management and program evaluation needs including but not limited to independent program and project audits to mitigate risks for fraud, waste, and abuse.

xx. Human Subjects Research

Research involving human subjects, biospecimens, or identifiable private information conducted with DOE funding is subject to the requirements of DOE Order 443.1C, Protection of Human Research Subjects, 45 CFR Part 46, Protection of Human Subjects (subpart A which is referred to as the “Common Rule”), and 10 CFR Part 745, Protection of Human Subjects. Additional information on the DOE Human Subjects Research Program can be found at: [HUMAN SUBJECTS Human Subjects Pr... | U.S. DOE Office of Science \(SC\) \(osti.gov\)](#).

VII. Questions/Agency Contacts

Upon the issuance of a FOA, DOE personnel are prohibited from communicating (in writing or otherwise) with applicants regarding the FOA except through the established question and answer process as described below. Specifically, questions regarding this FOA must be submitted to: community@hq.doe.gov. Questions must be submitted not later than 3 business days prior to the application due date and time. Please note, feedback on individual concepts will not be provided through Q&A.

All questions and answers related to this FOA will be posted on S3 Exchange at: <https://infrastructure-exchange.energy.gov>. **You must first select this specific FOA Number to view the questions and answers specific to this FOA.** SCEP will attempt to respond to a question within 3 business days, unless a similar question and answer has already been posted on the website.

Questions related to the registration process and use of the S3 Exchange website should be submitted to: InfrastructureExchangeSupport@hq.doe.gov



VIII. Other Information

A. FOA Modifications

Amendments to this FOA will be posted on the S3 Exchange website and the Grants.gov system. However, you will only receive an email when an amendment or a FOA is posted on these sites if you register for email notifications for this FOA in Grants.gov. SCEP recommends that you register as soon after the release of the FOA as possible to ensure you receive timely notice of any amendments or other FOAs.

B. Government Right to Reject or Negotiate

DOE reserves the right, without qualification, to reject any or all applications received in response to this FOA 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 anyone other than the Contracting Officer, either express or implied, is invalid.

D. Treatment of Application Information

Applicants should not include business sensitive (e.g., commercial or financial information that is privileged or confidential), trade secrets, proprietary, or otherwise confidential information in their application unless such information is necessary to convey an understanding of the proposed project or to comply with a requirement in the FOA. Applicants are advised to not include any critically sensitive proprietary detail.

If an application includes business sensitive, trade secrets, proprietary, or otherwise confidential information, it is furnished to the federal government (government) in confidence with the understanding that the information shall be used or disclosed only for evaluation of the application. Such information will be withheld from public disclosure to the extent permitted by law, including the Freedom of Information Act. Without assuming any liability for inadvertent disclosure, DOE will seek to limit disclosure of such information to its employees and to outside reviewers when necessary for merit review of the application or as otherwise authorized by law. This restriction does not limit the government's right to use the information if it is obtained from another source.

If an applicant chooses to submit business sensitive, trade secrets, proprietary, or otherwise confidential information, the applicant must provide **two copies** of the submission (e.g., Concept Paper, Full Application). The first copy should be marked, "non-confidential" with the information believed to be confidential deleted. The second copy should be marked "confidential" and must clearly and conspicuously identify the business sensitive, trade secrets, proprietary, or otherwise confidential information and 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 government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose as authorized by law.

The cover sheet of the Full Application, and other applicant submission must be marked as follows and identify the specific pages business sensitive, trade secrets, proprietary, or otherwise confidential information:

Notice of Restriction on Disclosure and Use of Data:

Pages [list applicable pages] of this document may contain business sensitive, trade secrets, proprietary, or otherwise confidential information that is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance agreement between the submitter and the government. The government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source. [End of Notice]

In addition, (1) the header and footer of every page that contains business sensitive, trade secrets, proprietary, or otherwise confidential information must be marked as follows: “Contains Business Sensitive, Trade Secrets, Proprietary, or Otherwise Confidential Information Exempt from Public Disclosure,” and (2) every line or paragraph containing such information must be clearly marked with double brackets or highlighting. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

E. Evaluation and Administration by Non-Federal Personnel

In conducting the merit review evaluation, the Go/No-Go Reviews and Peer Reviews, the government may seek the advice of qualified non-federal personnel as reviewers. The government may also use non-federal personnel to conduct routine, nondiscretionary administrative activities, including DOE contractors. The applicant, by submitting its application, consents to the use of non-federal reviewers/administrators. Non-federal reviewers must sign conflict of interest (COI) and non-disclosure acknowledgements (NDA) prior to reviewing an application. Non-federal personnel conducting administrative activities must sign an NDA.

F. Notice Regarding Eligible/Ineligible Activities

Eligible activities under this FOA include those which describe and promote the understanding of scientific and technical aspects of specific energy technologies, but not those which encourage or support political activities such as the collection and dissemination of information related to potential, planned or pending legislation.



G. Notice of Right to Conduct a Review of Financial Capability

DOE reserves the right to conduct an independent third party review of financial capability for applicants that are selected for negotiation of award (including personal credit information of principal(s) of a small business if there is insufficient information to determine financial capability of the organization).

H. Requirement for Full and Complete Disclosure

Applicants are required to make a full and complete disclosure of all information requested. Any failure to make a full and complete disclosure of the requested information may result in:

- The termination of award negotiations;
- The modification, suspension, and/or termination of a funding agreement;
- The initiation of debarment proceedings, debarment, and/or a declaration of ineligibility for receipt of federal contracts, subcontracts, and financial assistance and benefits; and
- Civil and/or criminal penalties.

I. Retention of Submissions

DOE expects to retain copies of all Full Applications and other submissions. No submissions will be returned. By applying to DOE for funding, applicants consent to DOE's retention of their submissions.

J. Title to Subject Inventions

Ownership of subject inventions is governed pursuant to the authorities listed below:

- Domestic Small Businesses, Educational Institutions, and Nonprofits: Under the Bayh-Dole Act (35 U.S.C. § 200 et seq.), domestic small businesses, educational institutions, and nonprofits may elect to retain title to their subject inventions;
- All other parties: The Federal Non-Nuclear Energy Act of 1974, 42 U.S.C. § 5908, provides that the government obtains title to new inventions unless a waiver is granted (see below);
- Class Patent Waiver:

Under 42 U.S.C. § 5908, title to subject inventions vests in the United States government and large businesses and foreign entities do not have the automatic right to elect to retain title to subject inventions. However, DOE may issue "class patent waivers" under which large businesses and foreign entities that meet certain stated requirements may elect to retain title to their subject inventions.



- **Advance and Identified Waivers:** For an applicant not covered by a Class Patent Waiver or the Bayh-Dole Act, the applicant may request a patent waiver that will cover subject inventions that may be invented under the award, in advance of or within 30 days after the effective date of the award. Even if an advance waiver is not requested or the request is denied, the recipient will have a continuing right under the award to request a waiver for identified inventions, i.e., individual subject inventions that are disclosed to DOE within the timeframes set forth in the award’s intellectual property data terms and conditions. Any patent waiver that may be granted is subject to certain terms and conditions in 10 CFR 784.
- **DEC:** On June 07, 2021, DOE approved a DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES (DEC) UNDER THE BAYH-DOLE ACT TO FURTHER PROMOTE DOMESTIC MANUFACTURE OF DOE SCIENCE AND ENERGY TECHNOLOGIES. In accordance with this DEC, all awards, including sub-awards, under this FOA shall include the U.S. Competitiveness Provision in accordance with Section VI.B.xx. U.S. Manufacturing Commitments of this FOA. A copy of the DEC can be found at <https://www.energy.gov/gc/determination-exceptional-circumstances-decs>. Pursuant to 37 CFR 401.4, any nonprofit organization or small business firm as defined by 35 U.S.C. § 201 affected by any DEC has the right to appeal it by providing written notice to DOE within 30 working days from the time it receives a copy of the determination.
 - DOE may issue and publish on the website above further DEC’s prior to the issuance of awards under this FOA. DOE may require additional submissions or requirements as authorized by any applicable DEC.

K. Government Rights in Subject Inventions

Where prime recipients and subrecipients retain title to subject inventions, the United States government retains certain rights.

Government Use License

The United States government retains a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world. This license extends to contractors doing work on behalf of the government.

March-In Rights

The United States government retains march-in rights with respect to all subject inventions. Through “march-in rights,” the government may require a prime recipient or subrecipient who has elected to retain title to a subject invention (or their assignees or exclusive licensees), to grant a license for use of the invention to a third party. In addition, the government may grant licenses for use of the



subject invention when a prime recipient, subrecipient, or their assignees and exclusive licensees refuse to do so.

DOE may exercise its march-in rights only if it determines that such action is necessary under any of the four following conditions:

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

Any determination that march-in rights are warranted must follow a fact-finding process in which the recipient has certain rights to present evidence and witnesses, confront witnesses and appear with counsel and appeal any adverse decision. To date, DOE has never exercised its march-in rights to any subject inventions.

L. Rights in Technical Data

Data rights differ based on whether data is first produced under an award or instead was developed at private expense outside the award.

“Limited Rights Data”: The United States government will not normally require delivery of confidential or trade secret-type technical data developed solely at private expense prior to issuance of an award, except as necessary to monitor technical progress and evaluate the potential of proposed technologies to reach specific technical and cost metrics.

Government Rights in Technical Data Produced Under Awards: The United States government retains unlimited rights in technical data produced under government financial assistance awards, including the right to distribute to the public. One exception to the foregoing is that invention disclosures may be protected from public disclosure for a reasonable time in order to allow for filing a patent application.

M. Copyright

The prime recipient and subrecipients may assert copyright in copyrightable works, such as software, first produced under the award without DOE approval. When copyright is asserted, the government retains a paid-up nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, distribute copies to the public, and to perform publicly and display publicly the copyrighted work. This license extends to contractors and others doing work on behalf of the government.



N. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (federal funds and recipient cost share) to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses *covered telecommunications equipment or services* as a substantial or essential component of any system, or as critical technology as part of any system. As described in Section 889 of Public Law 115-232, *covered telecommunications equipment* is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

See Public Law 115-232, Section 889, 2 CFR 200.216, and 2 CFR 200.471 for additional information.

O. Personally Identifiable Information (PII)

All information provided by the applicant must to the greatest extent possible exclude PII. The term "PII" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name. (See OMB Memorandum M-07-16 dated May 22, 2007, found at:

<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2007/m07-16.pdf>

By way of example, applicants must screen resumes to ensure that they do not contain PII such as personal addresses, personal landline/cell phone numbers, and personal emails. **Under no circumstances should Social Security Numbers (SSNs) be included in the application.** Federal agencies are prohibited from collecting, using, and displaying unnecessary SSNs. (See, the Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283, Dec 18, 2014; 44 U.S.C. § 3551).

P. Annual Independent Audits

If a for-profit entity is a prime recipient and has expended \$750,000 or more of DOE awards during the entity's fiscal year, an annual compliance audit performed by an independent auditor is required. For additional information, please refer to 2 CFR 910.501 and Subpart F.

If an educational institution, non-profit organization, or state/local government is a prime recipient or subrecipient and has expended \$750,000 or more of federal awards during the non-federal entity's fiscal year, then a Single or Program-Specific Audit is required. For additional information, please refer to 2 CFR 200.501 and Subpart F.



Applicants and subrecipients (if applicable) should propose sufficient costs in the project budget to cover the costs associated with the audit. DOE will share in the cost of the audit at its applicable cost share ratio.

Q. Informational Webinar

DOE will conduct one informational webinar during the FOA process. It will be held after the initial FOA release but before the due date for Concept Papers.

Attendance is not mandatory and will not positively or negatively impact the overall review of any applicant submissions. As the webinar will be open to all applicants who wish to participate, applicants should refrain from asking questions or communicating information that would reveal confidential and/or proprietary information specific to their project. Specific dates for the webinar can be found on the cover page of the FOA.

APPENDIX A – WAIVER REQUESTS FOR FOREIGN WORK

Waiver for Performance of Work in the United States (Foreign Work Waiver)

As set forth in Section IV.I.iii., all work under funding under this FOA must be performed in the United States. To seek a waiver of the Performance of Work in the United States requirement, the applicant must submit an explicit waiver request in the Full Application. A separate waiver request must be submitted for each entity proposing performance of work outside of the United States.

Overall, a waiver request must demonstrate to the satisfaction of DOE that it would further the purposes of this FOA and is otherwise in the economic interests of the United States to perform work outside of the United States. A request for a foreign work waiver must include the following:

1. The rationale for performing the work outside the United States (“foreign work”);
2. A description of the work proposed to be performed outside the United States;
3. An explanation as to how the foreign work is essential to the project;
4. A description of the anticipated benefits to be realized by the proposed foreign work and the anticipated contributions to the United States economy;
5. The associated benefits to be realized and the contribution to the project from the foreign work;
6. How the foreign work will benefit the United States, including manufacturing, contributions to employment in the United States and growth in new markets and jobs in the United States;
7. How the foreign work will promote manufacturing of products and/or services in the United States;



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8. A description of the likelihood of Intellectual Property (IP) being created from the foreign work and the treatment of any such IP;
 9. The total estimated cost (DOE and recipient cost share) of the proposed foreign work;
 10. The countries in which the foreign work is proposed to be performed; and
 11. The name of the entity that would perform the foreign work. Information about the entity(ies) involved in the work proposed to be conducted outside the United States. (i.e., entity(ies) seek a waiver and the entity(ies) that will conduct the work).

DOE may require additional information before considering the waiver request.

DOE's decision concerning a waiver request is not appealable.



APPENDIX B – 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 the statute and OMB Guidance Document dated April 18, 2022, 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 polyvinyl chloride, 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 the OMB guidance document:

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.



The Agency, 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 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 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 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, except where the prime recipient is a for-profit entity. Based on guidance from the Office of Management and Budget (OMB), the Buy America requirements of the BIL 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 Full Applications to select for award 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 DOE financial assistance agreement 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 negotiations. 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



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- 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
 - 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

<https://www.energy.gov/management/doe-buy-america-requirement-waiver-requests>.

DOE's decision concerning a waiver request is not appealable.



APPENDIX C – LIST OF ACRONYMS

BIL	Bipartisan Infrastructure Law
CETs	Critical and Emerging Technologies
CEJST	Climate and Economic Justice Screening Tool
COI	Conflict of Interest
CRADA	Cooperative Research and Development Agreement
DEC	Determination of Exceptional Circumstances
DEIA	Diversity, Equity, Inclusion, and Accessibility
DMP	Data Management Plan
DOE	Department of Energy
DOI	Digital Object Identifier
DOL	Department of Labor
EECBG	Energy Efficiency and Conservation Block Grant
EERE	Energy Efficiency and Renewable Energy
FAPIS	Federal Awardee Performance and Integrity Information System
FAR	Federal Acquisition Regulation
FCOI	Financial Conflicts of Interest
FFATA	Federal Funding and Transparency Act of 2006
FOA	Funding Opportunity Announcement
FOIA	Freedom of Information Act
FFRDC	Federally Funded Research and Development Center
GAAP	Generally Accepted Accounting Principles
HBCUs	Historically Black Colleges and Universities
HSRD	Human Subjects Research Database
IPMP	Intellectual Property Management Plan
IRB	Institutional Review Board
M&O	Management and Operations
MFA	Multi-Factor Authentication
MPIN	Marketing Partner ID Number
MSI	Minority-Serving institution
MYPP	Multi-Year Program Plan
NDA	Non-Disclosure Acknowledgement
NEPA	National Environmental Policy Act
NNSA	National Nuclear Security Agency
NSF	National Science Foundation
OFCCP	Office of Federal Contractor Compliance Programs
OHRP	Office of Human Research Protection
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSS	Open-Source Software
OSTI	Office of Scientific and Technical Information
OTA	Other Transactions Authority
PII	Personal Identifiable Information



SCEP

STATE & COMMUNITY ENERGY PROGRAMS

RD&D	Research, Development, and Demonstration
RFI	Request for Information
RFP	Request for Proposal
SAM	System for Award Management
SCEP	Office of State and Community Energy Programs
SciENCv	Science Experts Network Curriculum Vita
SMART	Specific, Measurable, Achievable, Relevant, and Timely
SOPO	Statement of Project Objectives
SPOC	Single Point of Contact
STEM	Science, Technology, Engineering, and Mathematics
TAA	Technical Assistance Agreement
TIA	Technology Investment Agreement
TRL	Technology Readiness Level
UCC	Uniform Commercial Code
UEI	Unique Entity Identifier
WBS	Work Breakdown Structure
WP	Work Proposal