



## Department of Energy (DOE) State and Community Energy Program

### 2022 Funding Opportunity Announcement for Energy Improvements at Public K-12 School Facilities - Bipartisan Infrastructure Law (BIL) - Renew America's Schools

**Funding Opportunity Announcement (FOA) Number: DE-FOA-0002756**

**FOA Type: Initial**

**Assistance Listing Number: 81.086**

|                                                                       |                       |
|-----------------------------------------------------------------------|-----------------------|
| <b>FOA Issue Date:</b>                                                | 11/29/2022            |
| <b>Informational Webinar:</b>                                         | 12/6/2022             |
| <b>Submission Deadline for Concept Papers:</b>                        | 1/26/2023 5:00pm ET   |
| <b>Submission Deadline for Full Applications:</b>                     | 4/21/2023 5:00pm ET   |
| <b>Expected Submission Deadline for Replies to Reviewer Comments:</b> | 5/22/2023 5:00pm ET   |
| <b>Expected Date for DOE Selection Notifications:</b>                 | 6/16/2023             |
| <b>Expected Timeframe for Award Negotiations:</b>                     | 6/17/2023 - 9/15/2023 |

- Applicants must submit a Concept Paper by 5:00pm ET 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 EERE Exchange at <https://eere-exchange.energy.gov/>, EERE's 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, 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.

*Questions about this FOA? [SchoolsFOA@DOE.gov](mailto:SchoolsFOA@DOE.gov)*

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**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 EERE Exchange with whom the DOE will communicate with 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.

## Modifications

- All modifications to the FOA are **[HIGHLIGHTED]** in the body of the FOA.

| Mod. No. | Date | Description of Modification                                                                                                                                 |
|----------|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 001      |      | Section references corrected under Section IV.F. Additional “Energy Justice Report” template has been provided and referenced in sections IV.C and IV.D.vi. |



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## I. Funding Opportunity Description

### A. Background and Context

The Office of State and Community Energy Programs is issuing this Funding Opportunity Announcement (FOA). Awards made under this FOA will be funded, in whole or in part, with funds appropriated by the Infrastructure Investment and Jobs Act,<sup>1</sup> 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 well-paying union jobs, tackle the climate crisis, and ensure stronger access to economic, environmental, and other benefits for disadvantaged communities..<sup>2</sup> The BIL appropriates more than \$62 billion to the Department of Energy (DOE)<sup>3</sup> 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 American 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 2050<sup>4</sup> to benefit all Americans.

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<sup>1</sup> 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".

<sup>2</sup> Pursuant to E.O. 14008 and the Office of Management and Budget's Interim Justice40 Implementation Guidance M-21-28, DOE has developed a definition and tools to locate and identify disadvantaged communities. These resources can be located at <https://energyjustice.egs.anl.gov/>. DOE will also recognize 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/>.

<sup>3</sup> 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>

<sup>4</sup> [Executive Order \(EO\) 14008](#), "Tackling the Climate Crisis at Home and Abroad," January 27, 2021.

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This FOA supports the implementation of [Section 40541 of the BIL](#), which provides \$500 million for grants for energy improvements at public school facilities for the five (5) year period encompassing Fiscal Years (FYs) 2022 through 2026. DOE aims to partner with public school stakeholders to facilitate substantial additional investment, prioritize schools with high needs, minimize administrative burden, and build enduring capacity in local educational agencies (LEAs) – as well as states –to maximize impact equitably and efficiently.

The activities to be funded under this FOA support BIL Section 40541 and the broader government-wide approach to support projects that enable replicable and scalable impacts, create innovative, sustaining partnerships, leverage funding and economies of scale, focus on disadvantaged communities, improve student, teacher, and occupant health, enrich learning and growth, assist schools that serve as community assets (e.g., neighborhood cooling centers or disaster recovery shelters), and are crafted thoughtfully within the context of school facilities (e.g., procurement restraints, construction windows, etc.). These projects should maximize the benefits of the clean energy transition as the nation works to curb the climate crisis, empower workers, and advance environmental justice. These BIL sections are focused on:

- High-impact energy efficiency and health improvements
- Innovative energy technology packages

## **i. Program Purpose**

This FOA supports the administration goals laid out above by funding projects which address historic inequities in school facilities investments, reduce school energy expenditures, help schools lead the nation in solving the climate crisis, and create well-paying union jobs. Energy consumption at U.S. public K-12 schools is a significant source of U.S. greenhouse gas emissions and the second highest operational expense to schools, second only to salaries.<sup>5</sup> Packages of energy improvements, e.g., combining heating, ventilation, and air conditioning (HVAC) and lighting upgrades with solar water heating,<sup>6</sup> can save even more energy than individual upgrades, and zero-energy or zero-energy ready construction can reduce energy consumption by more than 65%.<sup>3</sup> These

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<sup>5</sup> <https://betterbuildingssolutioncenter.energy.gov/accelerators/zero-energy-schools>

<sup>6</sup> [Dysart Unified School District: Kingswood Elementary School | Better Buildings Initiative \(energy.gov\)](#)

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improvements can pay dividends for years to come: Every dollar saved on utility bills is a dollar that can be better spent on educating children.

As part of the whole-of-government approach to advance equity and encourage worker organizing and collective bargaining,<sup>7,8,9</sup> and in alignment with BIL section 40541, this FOA and any related activities will seek to encourage meaningful engagement and participation of workforce organizations, including labor unions, as well as underserved communities and underrepresented groups, including consultation with Tribal Nations.<sup>10</sup> Consistent with Executive Order 14008,<sup>12</sup> this FOA is designed to help meet the goal that 40% of the overall benefits of certain federal investments in clean energy and climate solutions flow to disadvantaged communities, as defined by the Department pursuant to the Executive Order and to drive the creation of accessible well-paying jobs with the free and fair chance for workers to join a union.

## **ii. Technology Space and Strategic Goals**

This FOA seeks applications to address energy efficiency and infrastructure upgrades that enable replicable and scalable impacts, create innovative and sustaining partnerships, and leverage funding and economies of scale. Detailed technical descriptions of the specific Topic Areas are provided in the sections that follow.

## **iii. Teaming Partner List**

DOE is continuing to gather information for the “Teaming Partner List,” first presented in the Notice of Intent (DE-FOA-0002858), in order 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.

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<sup>7</sup> EO 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (January 20, 2021).

<sup>8</sup> EO 14025, “Worker Organizing and Empowerment,” April 26, 2021.

<sup>9</sup> EO 14052, “Implementation of the Infrastructure Investment and Jobs Act,” November 18, 2021.

<sup>10</sup> EO 13175, November 6, 2000 “Consultation and Coordination With Indian Tribal Governments”, charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of federal policies that have Tribal implications.

<sup>11</sup> White House Memorandum, “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships,” January 26, 2021

<sup>12</sup> EO 14008, “Tackling the Climate Crisis at Home and Abroad,” January 27, 2021.

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Updates to the Teaming Partner List will be available on the EERE Exchange website under this funding opportunity. 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, generic organization contact email, generic contact phone, organization type, geographical area of interest, area of technical expertise (bulleted list less than 25 words), and brief description of capabilities (less than 100 words). Interested parties should email the information to [SchoolsFOA@doe.gov](mailto:SchoolsFOA@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.

## **B. Topic Areas**

All work for projects selected under this FOA must be performed in the United States.

### **Focus Areas for Topics**

DOE will encourage eligible applicants to consider projects that enable replicable and scalable impacts, create innovative, sustaining partnerships, leverage funding and economies of scale, focus on disadvantaged communities, improve student, teacher, and occupant health, enrich learning and growth, assist schools that serve as community assets (e.g., neighborhood cooling centers or disaster recovery shelters), and are crafted thoughtfully within the context of public-school facilities (e.g., procurement restraints, construction windows, etc.). Project partners may include, but are not limited to: Governmental entities such as states, local governments, and Tribes; for-profit entities such as utilities and

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companies that provide energy services or manufacture energy systems; and non-governmental organizations such as community-based organizations, national associations, labor unions, workforce training providers, and energy-focused groups.

Priority will be given to applicants for each topic area based upon the partnering LEA's demonstrated funding need for energy improvements; whether the school serves a high percentage of students who are eligible for a free or reduced-price lunch, or the partnering local educational agency of which is designated with a school district locale code of 41 (fringe), 42 (distant), or 43 (remote) as determined by the National Center for Education Statistics; and whether a proposal leverages private sector investment through energy-related performance contracting. Additional consideration will be given to applicants that show the extent of the disparity between the fiscal capacity of the eligible entity to carry out energy improvements at school facilities and the needs of the partnering LEA for those energy improvements; the likelihood that the partnering LEA or eligible entity will maintain the school facilities receiving improvements; and the potential energy efficiency and safety benefits from the proposed energy improvements.

**Topic Area 1 – High-Impact Energy Efficiency and Health Improvements**

Proposals contemplated under this topic area will include energy improvements that result in direct reduction to school energy costs, increased energy efficiency, and lead to improvements in teacher and student health, including indoor air quality. Energy cost savings may be realized by reduced loads and/or by demand flexibility and demand response approaches.

These high-impact energy improvements may take the form of repairs, renovations, or installations to the facility envelope, air conditioning system, ventilation system, heating system, domestic hot water heating system, compressed air system, distribution system, lighting system, power system, and/or controls of a building. Applicants are encouraged to package multiple improvements for deeper savings and carbon reductions.

**Topic Area 2 - Innovative Energy Technology Packages**

Proposals contemplated under this topic include innovative energy technology packages. Applicants may include any improvement, repair, or renovation to a school that incorporates two or more of the following energy improvements:

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- Energy efficiency measures, e.g., HVAC, building envelope improvements, lighting retrofits, sensors and controls
- Installation of renewable energy technologies, e.g., rooftop solar or micro wind turbines
- Alternative fueled vehicle infrastructure on school grounds
- Purchase or lease of alternative fueled vehicles to be used by a school

### **C. Applications Specifically Not of Interest**

The following types of applications will be deemed nonresponsive and will not be reviewed or considered (See Section III.D. of the FOA):

- Applications that fall outside the technical parameters specified in Sections I.A. and I.B. of the FOA.
- Applications for proposed technologies that are not based on sound scientific principles (e.g., violates the laws of thermodynamics).
- Applications that do not include an “energy improvement” as<sup>13</sup> defined in Section 40541(a)(4) of the BIL.
- Applications that do not include an LEA and therefore do not qualify as an “eligible entity” under Section 40541(a)(3) of the BIL. See Section III, Eligibility Information for more information.

### **D. 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 overall project benefits of certain federal investments flow to disadvantaged

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<sup>13</sup> (A) any improvement, repair, or renovation to a school that results in a direct reduction in school energy costs, including improvements to the envelope, air conditioning system, ventilation system, heating system, domestic hot water heating system, compressed air system, distribution system, lighting system, power system, and controls of a building; (B) any improvement, repair, or renovation to, or installation in, a school that--(i) leads to an improvement in teacher and student health, including indoor air quality; and (ii) achieves energy savings; (C) any improvement, repair, or renovation to a school involving the installation of renewable energy technologies; (D) the installation of alternative fueled vehicle infrastructure on school grounds for-- (i) exclusive use of school buses, school fleets, or students; or (ii) the general public; and (E) the purchase or lease of alternative fueled vehicles to be used by a school, including school buses, fleet vehicles, and other operational vehicles.

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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 Partnership Documentation 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 job benefits, ideally through the use of using negotiated agreements between the applicant and the community, 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.

This section is included in the "Project Narrative Template" (see Section IV.D.ii).

## **E. Authorizing Statutes**

The programmatic authorizing statute is [Section 40541 of Public Law 117-58](#).

Awards made under this announcement will fall under the purview of 2 CFR Part 200 as amended by 2 CFR Part 910.

## **F. 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 that all iron, steel, manufactured goods, and construction materials used in the infrastructure activities of applicable projects are produced in the United States;

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- 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 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 \$80,000,000 of federal funding available for new awards under this FOA, subject to the availability of appropriated funds. DOE anticipates making approximately 20-100 awards under this FOA. DOE may issue one, multiple, or no awards. Individual awards may vary between \$500,000 and \$15,000,000.

DOE may issue awards in one, multiple, or none of the following topic areas:

| Topic Areas                                                     | Technology Readiness Level<br>(Appendix C) | Fiscal Year Appropriated | # of Awards<br>(min - max) | Award Duration<br>(e.g., 1-3 years) | Federal \$\$ per award<br>(estimated) | Total Federal Funding<br>(estimated) |
|-----------------------------------------------------------------|--------------------------------------------|--------------------------|----------------------------|-------------------------------------|---------------------------------------|--------------------------------------|
| Topic 1 - High-Impact Energy Efficiency and Health Improvements | 6-9                                        | FY22                     | 20-100                     | 2-5 years                           | \$500,000-\$15,000,000                | \$80,000,000                         |
| Topic 2 - Innovative Energy Technology Packages                 |                                            |                          |                            |                                     |                                       |                                      |

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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.

**ii. Period of Performance**

DOE anticipates making awards that will run from 24 months up to 60 months in length, comprised of multiple budget periods. Project continuation will be contingent upon several elements, including satisfactory performance and DOE's Go/No-Go decision. For a complete list and more information on the Go/No-Go review, see Section VI.B.vxiv.

**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.x. of the FOA for more information on what substantial involvement may involve.



**ii. Funding Agreements with Federally Funded Research and Development Center (FFRDCs)<sup>14</sup>**

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..

**iii. Grants**

Although DOE has the authority to provide financial support to prime recipients through grants, DOE generally does not fund projects through grants. DOE may fund a limited number of projects through grants, as appropriate.

### **III. Eligibility Information**

**A. Eligible Applicants**

To be considered for substantive evaluation under this funding opportunity, an applicant must meet the eligibility requirements as described in Section 40541(a)(3) of the BIL. If the application does not meet these eligibility requirements, it will be considered ineligible and removed from further evaluation. Specifically, an eligible entity is described as a consortium of:

One local educational agency (LEA)<sup>15</sup>; and one or more

1. Schools;
2. Nonprofit organizations that have the knowledge and capacity to partner and assist with energy improvements;
3. For-profit organizations that have the knowledge and capacity to partner and assist with energy improvements; or
4. Community partners that have the knowledge and capacity to partner and assist with energy improvements.

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<sup>14</sup> Federally Funded Research and Development Centers (FFRDC) - FFRDCs 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/>.

<sup>15</sup> The term “local educational agency” (LEA) has the meaning given the term in section 8101 of the Elementary and Secondary Education Act of 1965. See 20 U.S.C. § 7801(30).





**i. Domestic Entities**

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

1. Institutions of higher education;
2. For-profit entities;
3. Non-profit entities; and
4. State and local governmental entities, and Tribal Nations.

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; have majority domestic ownership and control; and have a physical place of business in the United States.

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

Non-DOE/NNSA FFRDCs are eligible to participate as a subrecipient, but they 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.

**ii. Incorporated Consortia**

Domestic incorporated consortia are eligible to participate as a prime recipient or 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. For consortia incorporated (or otherwise formed) in a foreign country, please refer to the requirements in “Foreign 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

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of its internal governance structure and its internal rules to the DOE Contracting Officer.

### **iii. 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 Share Percentage**

A Cost Share Reduction determination has been issued for this funding opportunity announcement pursuant to Section 988(c)(2) of the Energy Policy Act of 2005 that is applicable to eligible entities applying under this funding opportunity.

In accordance with the cost share reduction waiver, cost share must be at least 5% of the total allowable costs for commercial application projects (i.e., the sum of the government share, including FFRDC costs if applicable, and the recipient share of allowable costs equals the total allowable cost of the project) and must come from non-federal sources unless otherwise allowed by law. (See 2 CFR 200.306 and 2 CFR 910.130 for the applicable cost sharing requirements.)

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To assist applicants in calculating proper cost share amounts, DOE has included a cost share information sheet and sample cost share calculation in Appendix A of this FOA.

**i. Legal Responsibility**

Although the cost share requirement applies to the project as a whole, including work performed by members of the project team other than the prime recipient, the prime recipient is legally responsible for paying the entire cost share. If the funding agreement is terminated prior to the end of the project period, the prime recipient is required to contribute at least the cost share percentage of total expenditures incurred through the date of termination.

The prime recipient is solely responsible for managing cost share contributions by the project team and enforcing cost share obligation assumed by project team members in subawards or related agreements.

**ii. Cost Share Allocation**

Each project team is free to determine how best to allocate the cost share requirement among the team members. The amount contributed by individual project team members may vary, as long as the cost share requirement for the project as a whole is met.

**iii. Cost Share Types and Allowability**

Every cost share contribution must be allowable under the applicable federal cost principles, as described in Section IV.I.i. of the FOA. In addition, cost share must be verifiable upon submission of the Full Application.

Project teams may provide cost share in the form of cash or in-kind contributions. Cost share may be provided by the prime recipient, subrecipients, or third parties (entities that do not have a role in performing the scope of work). Vendors/contractors may not provide cost share. Any partial donation of goods or services is considered a discount and is not allowable.

Cash contributions include, but are not limited to: personnel costs, fringe costs, supply and equipment costs, indirect costs and other direct costs.

In-kind contributions are those where a value of the contribution can be readily determined, verified, and justified but where no actual cash is transacted in

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securing the good or service comprising the contribution. Allowable in-kind contributions include, but are not limited to: the donation of volunteer time or the donation of space or use of equipment.

Project teams may use funding or property received from state or local governments to meet the cost share requirement, so long as the funding was not provided to the state or local government by the federal government.

The recipient may not use the following sources to meet its cost share obligations including, but not limited to:

- Revenues or royalties from the prospective operation of an activity beyond the project period;
- Proceeds from the prospective sale of an asset of an activity;
- Federal funding or property (e.g., federal grants, equipment owned by the federal government); or
- Expenditures that were reimbursed under a separate federal program.

Project teams may not use the same cash or in-kind contributions to meet cost share requirements for more than one project or program.

Cost share contributions must be specified in the project budget, verifiable from the prime recipient's records, and necessary and reasonable for proper and efficient accomplishment of the project. As all sources of cost share are considered part of total project cost, the cost share dollars will be scrutinized under the same federal regulations as federal dollars to the project. Every cost share contribution must be reviewed and approved in advance by the Contracting Officer and incorporated into the project budget before the expenditures are incurred.

Applicants are encouraged to refer to 2 CFR 200.306 and 2 CFR 910.130 for additional cost sharing requirements.

#### **iv. Cost Share Contributions by FFRDCs**

Because FFRDCs are funded by the federal government, costs incurred by FFRDCs generally may not be used to meet the cost share requirement. FFRDCs may



contribute cost share only if the contributions are paid directly from the contractor's Management Fee or another non-federal source.

**v. Cost Share Verification**

Applicants are required to provide written assurance of their proposed cost share contributions in their Full Applications.

Upon selection for award negotiations, applicants are required to provide additional information and documentation regarding their cost share contributions. Please refer to Appendix A of the FOA.

**vi. Cost Share Payment**

DOE requires prime recipients to contribute the cost share amount incrementally over the life of the award. Specifically, the prime recipient's cost share for each billing period must always reflect the overall cost share ratio negotiated by the parties (i.e., the total amount of cost sharing on each invoice when considered cumulatively with previous invoices must reflect, at a minimum, the cost sharing percentage negotiated). As FFRDC funding will be provided directly to the FFRDC(s) by DOE, prime recipients will be required to provide project cost share at a percentage commensurate with the FFRDC costs, on a budget period basis, resulting in a higher interim invoicing cost share ratio than the total award ratio.

In limited circumstances, and where it is in the government's interest, the DOE Contracting Officer may approve a request by the prime recipient to meet its cost share requirements on a less frequent basis, such as monthly or quarterly. Regardless of the interval requested, the prime recipient must be up-to-date on cost share at each interval. Such requests must be sent to the Contracting Officer during award negotiations and include the following information: (1) a detailed justification for the request; (2) a proposed schedule of payments, including amounts and dates; (3) a written commitment to meet that schedule; and (4) such evidence as necessary to demonstrate that the prime recipient has complied with its cost share obligations to date. The Contracting Officer must approve all such requests before they go into effect.

**C. Compliance Criteria**

All applicant submissions must:

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- Comply with the applicable content and form requirements listed in Section IV. of the FOA;
- Include all required documents;
- Be successfully uploaded in EERE Exchange <https://eere-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 EERE Exchange, submissions submitted after the applicable deadline, or incomplete submissions.

**Applicants are strongly encouraged to submit their Concept Papers, Full Applications, and Replies to Reviewer Comments 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, Full Application, or Reply to Reviewer Comments. Once the Concept Paper, Full Application, or Reply to Reviewer Comments is submitted in EERE 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, Full Application, or Reply to Reviewer Comments 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.C. of the FOA, are deemed nonresponsive and are not reviewed or considered.

#### **E. Other Eligibility Requirements**

##### **i. Requirements for 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

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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. Value/Funding

The value of and funding for the FFRDC portion of the work will not normally be included in the award to a successful applicant. Usually, DOE will fund a DOE/NNSA FFRDC through the DOE field work proposal (WP) system and non-DOE/NNSA FFRDC through an interagency agreement with the sponsoring agency.

d. Cost Share

Although the FFRDC portion of the work is usually excluded from the award to a successful applicant, the applicant's cost share requirement will be based on the total cost of the project, including the applicant's, the subrecipient's, and the FFRDC's portions of the project.

e. 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. Limit on FFRDC Effort.

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The scope of work to be performed by the FFRDC may not be more significant than the scope of work to be performed by the applicant.

**ii. Agreement Requirements for DOE/NNSA FFRDCs Participating as a Subrecipient**

DOE/NNSA FFRDCs participating as a subrecipient on a project and funded directly through the DOE WP System are strongly encouraged to establish a Cooperative Research and Development Agreement (CRADA) or, if the role of the DOE/NNSA FFRDC is limited to technical assistance and intellectual property is not anticipated to be generated from the DOE/NNSA FFRDC's work, a Technical Assistance Agreement (TAA), with at least the prime recipient before any project work begins. Any questions regarding the use of a CRADA or TAA should be directed to the cognizant DOE field intellectual property (IP) counsel.

The CRADA or TAA is used to ensure accountability for project work and provide the appropriate management of intellectual property (IP), e.g., data protection and background IP. The CRADA or TAA must be agreed upon by all parties and submitted to DOE for approval, or submitted to DOE for notice under the Master Scope of Work process, when applicable, using any DOE approved CRADA or TAA template without substantive changes by the time the award is made to the prime recipient.

**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.

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## 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.**

Applicants are encouraged to use the “Project Narrative Template” that is available as an attachment under this funding opportunity. If applicants do not use the template, the content in the “Project Narrative Template” is required and must conform to the form and content requirements, 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 EERE 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., *ControlNumber\_ApplicantName\_FullApplication*);
- Page numbers must be included in the footer of every page; and
- 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.

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**i. Additional Information on EERE Exchange**

EERE 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 EERE 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 EERE Exchange helpdesk for assistance ([EERE-ExchangeSupport@hq.doe.gov](mailto:EERE-ExchangeSupport@hq.doe.gov)). The EERE Exchange helpdesk and/or the EERE Exchange system administrators will assist applicants in resolving issues.

**B. Application Forms and Templates**

The application forms and instructions are available on EERE Exchange. To access these materials, go to <https://eere-Exchange.energy.gov> and select the appropriate funding opportunity number. Navigate to “Application Forms and Templates” and select the appropriate form or template to download.

Note: The maximum file size that can be uploaded to the EERE Exchange website is 50MB. Files in excess of 50MB cannot be uploaded, and hence cannot be submitted for review. If a file exceeds 50MB 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:

**ProjectNarrativeTemplate\_Part\_1**

**DOE will not accept late submissions that resulted from technical difficulties due to uploading files that exceed 50MB.**

**C. Content and Form of the Concept Paper**

Each Concept Paper must be targeted to a specific topic area. The Concept Paper must conform to the requirements listed below, including the stated page limits.

| Section    | Page Limit     | Description                                                                                                                                                                                                                                          |
|------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cover Page | 1 page maximum | The cover page should include the project title, the specific announcement Topic Area being addressed, both the technical and business points of contact, names of all team member organizations, the project address location(s) of proposed energy |

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|                            |                 | improvements, and any statements regarding confidentiality.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Project Description</b> | 2 pages maximum | <p>Applicants are required to provide a summary of the energy improvements and intended achievements for the particular topic area selected (High-Impact Energy Efficiency and Health Improvements or Innovative Energy Technology Packages). This should include:</p> <ul style="list-style-type: none"><li>• Identification of proposed project location(s).</li><li>• Proposed energy improvements</li><li>• Cost estimate for proposed energy improvements</li><li>• The potential energy efficiency, health, and/or safety benefits from the proposed energy improvements</li><li>• Innovation and scalability of technology packages partnership structures and/or financing options</li><li>• Plan to execute and maintain improvements</li></ul>                                                                                                                                                                    |
| <b>Statements of Need</b>  | N/A             | <p>Community Need:</p> <ul style="list-style-type: none"><li>• The applicant should include a short needs summary for the community served by the school facility for each proposed project location(s).</li><li>• DOE has developed the “Energy Justice Mapping Tool for Schools” (<a href="https://energyjustice-schools.egs.anl.gov">https://energyjustice-schools.egs.anl.gov</a>) to help applicants derive relevant needs information on a school-by-school basis. Applicants must use this tool to generate a report for each facility of the proposed project. All reports should be included with the concept paper submission as a standalone attachment.</li><li>• Applicants who are unable to locate and generate a pdf report from the “Energy Justice Mapping Tool for Schools” are required to use the template found in Section IV.D.vi. to generate a report.</li></ul> <p>Facility Needs Assessment:</p> |

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|  |  | <ul style="list-style-type: none"><li>• The applicant should include a short summary for each school in the proposal that describes the facility needs assessment based on the current condition of the school facility that will receive the energy improvements.</li><li>• DOE has compiled a variety of tools that can be used to assess needs that can be found on the DOE webpage (<a href="https://www.energy.gov/bil/grants-energy-improvements-public-school-facilities">https://www.energy.gov/bil/grants-energy-improvements-public-school-facilities</a><a href="https://www.energy.gov/bil/grants-energy-improvements-public-school-facilities">https://www.energy.gov/bil/grants-energy-improvements-public-school-facilities</a>) under “Related Resources”. Applicants can either utilize these tools to generate a facility needs assessment(s) or include a facility needs assessment(s) performed by a certified professional. Regardless, applicants must include a facility needs assessment for each school addressed in the proposal. All assessments should be included with the concept paper submission as a standalone attachment.</li></ul> <p>Fiscal Need and Capacity:</p> <ul style="list-style-type: none"><li>• The applicant should describe the disparity between the fiscal capacity of the eligible entity to carry out energy improvements at school facilities and the needs of the partnering LEA for those energy improvements.</li></ul> |
|--|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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 EERE Exchange website at <https://eere-Exchange.energy.gov/>.

Applicants will have approximately 30 days from receipt of the Concept Paper Encourage/Discourage notification on EERE Exchange to prepare and submit a

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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.

**i. 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                                           | Required/<br>Optional | File Format       | Page Limit                       | File Name                                                |
|---------|-----------------------------------------------------|-----------------------|-------------------|----------------------------------|----------------------------------------------------------|
| ii.     | Project Narrative including Community Benefits Plan | Required              | PDF or MS Word    | 15 pages (max)                   | ControlNumber_LeadOrganization_ProjectNarrative          |
| iii.    | Budget Information (SF-424A)                        | Required              | MS Excel Workbook | 2 pages (including instructions) | ControlNumber_LeadOrganization_Budget_Information        |
| iv.     | Resumes                                             | Required              | PDF               | 2 pages (max)                    | ControlNumber_LeadOrganization_Resumes                   |
| v.      | Letters of Commitment                               | Required              | PDF               | 1 page each (max)                | ControlNumber_LeadOrganization_LOCs                      |
| vi.     | Energy Justice School Mapping Tool Report(s)        | Required              | PDF               | n/a                              | ControlNumber_LeadOrganization_EJ_School_Report          |
| vii.    | Facility Needs Assessment(s)                        | Required              | PDF               | n/a                              | ControlNumber_LeadOrganization_Facility_Needs_Assessment |
| viii.   | Community Partnership Documentation                 | Required              | PDF               | n/a                              | ControlNumber_LeadOrganization_CPD                       |
| ix.     | SF-424: Application for Federal Assistance          | Required              | PDF               | n/a                              | ControlNumber_LeadOrganization_App424                    |
| x.      | Summary for Public Release                          | Required              | PDF               | 1 (max)                          | ControlNumber_LeadOrganization_Summary                   |
| xi.     | Summary Slide                                       | Required              | MS Power-point    | 1                                | ControlNumber_LeadOrganization_Slide                     |

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|       |                                                                   |                        |     |     |                                          |
|-------|-------------------------------------------------------------------|------------------------|-----|-----|------------------------------------------|
| xii.  | SF-LLL Disclosure of Lobbying Activities                          | Required               | PDF | n/a | ControlNumber_LeadOrganization_SF-LLL    |
| xiii. | Current and Pending Support                                       | Optional               | PDF | n/a | ControlNumber_LeadOrganization_CPS       |
| xiv.  | Authorization for non-DOE/NNSA or DOE/NNSA FFRDCs (if applicable) | Required if applicable | PDF | n/a | ControlNumber_LeadOrganization_FFRDCAuth |

**Note:** The maximum file size that can be uploaded to the EERE Exchange website is 50MB. See Section IV.B.

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

## ii. Project Narrative

Applicants are encouraged to use the “Project Narrative Template” provided in Exchange under this FOA posting. If applicants do not use the template, the applicants should still refer to “Project Narrative Template” and conform to the content. This narrative must address the technical review criteria as discussed in Section V.A.ii of the FOA. Save the Project Narrative in a single PDF file using the following convention for the title “ControlNumber\_LeadOrganization\_ProjectNarrative”.

Applicants must provide sufficient citations and references to the primary research literature to justify the claims and approaches made in the Project Narrative. However, DOE and reviewers are under no obligation to review cited sources.

The Community Benefits Plan discussed in Section I.D. above, must be submitted as part of the project narrative. For projects funded under this FOA, DOE will provide specific reporting guidance for the benefits described above. For additional information, see [Community Benefits Plan Frequently Asked Questions \(FAQs\)](#)Community Benefits Plan Frequently Asked Questions (FAQs).

The Project Narrative to the Full Application may not be more than 15 pages, including the cover page and all citations, charts, graphs, maps, photos, or other graphics, and must include all of the information in the table below. The

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applicant should consider the weighting of each of the technical review criterion (see Section V.A.ii. of the FOA) when preparing the Project Narrative.

Note: The page limit restriction does not apply to the attachments referenced in the “Project Narrative Template” under section 2.1 Community Need or section 2.2 Facility Needs Assessment.

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

### **iii. Budget Information (SF-424A)**

Applicants must complete the Budget Information (SF-424A) spreadsheet, which is available [EERE Exchange](#) attachment under this FOA posting in Exchange.

Applicants should consider all costs associated with implementing the project as outlined in the Project Narrative. Save the Budget Information spreadsheet in a single Microsoft Excel file using the following convention for the title “ControlNumber\_LeadOrganization\_Budget\_Information”.

### **iv. Resumes**

A resume provides information that can be used by reviewers to evaluate the individual’s relevant skills, experience of the key project personnel. Applicants must submit a two-page resume for each project manager and key personnel that includes the following:

1. Contact Information;
2. Education: Include all academic institutions attended, major/area, degree;
3. Training: (e.g.,) certification or credential from a Registered Apprenticeship or Labor Management Partnership
4. Professional Experience: Beginning with the current position, list professional/academic positions in chronological order with a brief description; and

Save the resumes in a single PDF file using the following convention for the title “ControlNumber\_LeadOrganization\_Resumes”.



**v. Letters of Commitment**

Submit letters of commitment from all subrecipient and third-party cost share providers. If applicable, the letter must 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”.

**vi. Energy Justice Mapping Tool Report(s)**

DOE has developed the “Energy Justice Mapping Tool for Schools” (<https://energyjustice-schools.egs.anl.gov>) to help applicants derive relevant needs information on a school-by-school basis. Applicants must use this tool to generate a report for each facility of the proposed project. All reports should be included with the full application submission as a standalone attachment.

Save all reports in a single PDF file using the following convention for the title “ControlNumber\_LeadOrganization\_EJ\_School\_Report”.

Applicants who are unable to locate and generate a pdf report from the Energy Justice Mapping Tool for Schools (<https://energyjustice-schools.egs.anl.gov/>), are required to use the “Energy Justice Report” template to generate a one-page maximum report. This is required information per Section IV.C (Concept Paper) and Section IV.D (Full Application) submissions. Please note, applicants should only use this template if they are unable to locate their school within the Energy Justice Mapping Tool for Schools.

**vii. Facility Needs Assessment(s)**

DOE has compiled a variety of tools that can be used to assess needs that can be found on the DOE webpage (<https://www.energy.gov/bil/grants-energy-improvements-public-school-facilities>) under “Related Resources”. Applicants can either utilize these tools to generate a facility needs assessment(s) or include a facility needs assessment(s) performed by a certified professional. Regardless, applicants must include a facility needs assessment for each school addressed in

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the proposal. All assessments should be included with the full application submission as a standalone attachment.

Save all reports in a single PDF file using the following convention for the title "ControlNumber\_LeadOrganization\_Facility\_Needs\_Assessment"

**viii. Community Partnership Documentation**

In support of the Community Benefits Plan, applicants may submit documentation to demonstrate existing or planned partnerships with 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 a Workforce and Community Agreement 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".

**ix. SF-424: Application for Federal Assistance**

Applicants must complete the SF-424 Application for Federal Assistance which is available under this FOA posting in Exchange. 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 PDF file using the following convention for the title “ControlNumber\_LeadOrganization\_424”.

**x. Summary for Public Release**

Applicants must submit a short one paragraph summary of their project that is suitable for dissemination to the public should they be selected for negotiation. Example information that should be contained in this statement would include the name of the applicant, the objectives/description of the project, the potential impact of the project (e.g., benefits, outcomes), and the project’s commitments and goals described in the Community Benefits Plan. The summary should fit on a 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”.

**xi. Summary Slide**

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

- Name of Applicant;
- Project Title;
- Project Description;
- Summary of Need (Community, Facility, Fiscal);
- Benefits Metrics;
- Any key graphics (illustrations, charts and/or tables); and
- Requested DOE funds and proposed applicant cost share.

For convenience a “Summary Slide Template” example has been included as a downloadable document on EERE Exchange as part of this funding opportunity. Save the Summary Slide in a single Microsoft PowerPoint file using the following convention for the title “ControlNumber\_LeadOrganization\_Slide”.

**xii. 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.

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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”.

**xiii. Current and Pending Support**

Current and pending support is intended to allow the identification of potential duplication, overcommitment, potential conflicts of interest or commitment, and all other sources of support. As part of the post selection documentation requirement, the principal investigator and all senior/key personnel at the applicant and subrecipient level must provide a list of all sponsored activities, awards, and appointments, whether paid or unpaid; provided as a gift with terms or conditions or provided as a gift without terms or conditions; full-time, part-time, or voluntary; faculty, visiting, adjunct, or honorary; cash or in-kind; foreign or domestic; governmental or private-sector; directly supporting the individual’s research or indirectly supporting the individual by supporting students, research staff, space, equipment, or other research expenses. All connections with foreign government-sponsored talent recruitment programs must be identified in current and pending support.

For every activity, list the following items:

- The sponsor of the activity or the source of funding;
- The award or other identifying number;
- The title of the award or activity. If the title of the award or activity is not descriptive, add a brief description of the research being performed that would identify any overlaps or synergies with the proposed research;

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- The total cost or value of the award or activity, including direct and indirect costs and cost share. For pending proposals, provide the total amount of requested funding;
- The award period (start date – end date); and
- The person-months of effort per year being dedicated to the award or activity.

To identify overlap, duplication of effort, or synergistic efforts, append a description of the other award or activity to the current and pending support.

Details of any obligations, contractual or otherwise, to any program, entity, or organization sponsored by a foreign government must be provided on request to either the applicant institution or DOE. Supporting documents of any identified source of support must be provided to DOE on request, including certified translations of any document.

PIs and senior/key personnel must provide a separate disclosure statement listing the required information above regarding current and pending support. Each individual must sign and date their respective disclosure statement and include the following certification statement:

I, [Full Name and Title], certify to the best of my knowledge and belief that the information contained in this Current and Pending Support Disclosure Statement is true, complete, and accurate. I understand that any false, fictitious, or fraudulent information, misrepresentations, half-truths, or omissions of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (18 U.S.C. §§ 1001 and 287, and 31 U.S.C. §§ 3729-3733 and 3801-3812). I further understand and agree that (1) the statements and representations made herein are material to DOE's funding decision, and (2) I have a responsibility to update the disclosures during the period of performance of the award should circumstances change which impact the responses provided above.

The information may be provided in the format approved by the National Science Foundation (NSF), which may be generated by the Science Experts

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Network Curriculum Vita (SciENCv), a cooperative venture maintained at <https://www.ncbi.nlm.nih.gov/sciencv/>, and is also available at <https://www.nsf.gov/bfa/dias/policy/nsfapprovedformats/cps.pdf>. The use of a format required by another agency is intended to reduce the administrative burden to researchers by promoting the use of common formats. If the NSF format is used, the individual must still include a signature, date, and a certification statement using the language included in the paragraph above.

**If selected for award negotiations this information will be required.**

### Definitions:

**Current and pending support** – (a) All resources made available, or expected to be made available, to an individual in support of the individual's RD&D efforts, regardless of (i) whether the source is foreign or domestic; (ii) whether the resource is made available through the entity applying for an award or directly to the individual; or (iii) whether the resource has monetary value; and (b) includes in-kind contributions requiring a commitment of time and directly supporting the individual's RD&D efforts, such as the provision of office or laboratory space, equipment, supplies, employees, or students. This term has the same meaning as the term Other Support as applied to researchers in NSPM-33: For researchers, Other Support includes all resources made available to a researcher in support of and/or related to all of their professional RD&D efforts, including resources provided directly to the individual or through the organization, and regardless of whether or not they have monetary value (e.g., even if the support received is only in-kind, such as office/laboratory space, equipment, supplies, or employees). This includes resource and/or financial support from all foreign and domestic entities, including but not limited to, gifts provided with terms or conditions, financial support for laboratory personnel, and participation of student and visiting researchers supported by other sources of funding.

**Foreign Government-Sponsored Talent Recruitment Program** – An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or

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software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to United States entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

**Senior/key personnel** – an individual who contributes in a substantive, meaningful way to the scientific development or execution of a research, development and demonstration (RD&D) project proposed to be carried out with DOE award.<sup>16</sup>

**xiv. Authorization for 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. Content and Form of Replies to Reviewers Comments (Optional Submission)**

DOE will provide applicants with reviewer comments following the evaluation of all eligible Full Applications. Applicants have a brief opportunity to prepare a short Reply to Reviewer Comments (Reply). The Reply must not exceed three (3) pages. If a Reply is more than three (3) pages in length, DOE will review only the

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<sup>16</sup> Typically, these individuals have doctoral or other professional degrees, although individuals at the masters or baccalaureate level may be considered senior/key personnel if their involvement meets this definition. Consultants, graduate students, and those with a postdoctoral role also may be considered senior/key personnel if they meet this definition.



first three (3) pages and disregard any additional pages. Applicants may use the Reply to respond to one or more comments or to supplement their Full Application. The Reply may include text, graphs, charts, or data.

DOE will post the reviewer comments in EERE Exchange. The expected submission deadline is on the cover page of the FOA; however, it is the applicant's responsibility to monitor EERE Exchange in the event that the expected date changes. The deadline will not be extended for applicants who are unable to timely submit their Reply due to failure to check EERE Exchange or relying on the expected date alone. Applicants should anticipate having approximately three (3) business days to submit a Reply.

Applicants are not required to submit a Reply to Reviewer Comments. DOE will review and consider each eligible Full Application, even if no Reply is submitted or if the Reply is found to be ineligible.

## **F. 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 is a non-exhaustive list of examples of information that may be required:

- Personnel proposed to work on the project and collaborating organizations (See Section VI.B.xviii. Participants and Collaborating Organizations);
- Current and Pending Support (See Sections IV.D.xiii. and Section VI.B.xix. Current and Pending Support);
- A full Budget Justification Workbook
- Other budget information;
- Selectees are required to complete a full Statement of Project Objectives (SOPO).
- 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;
- Indirect cost information;
- Representation of Limited Rights Data and Restricted Software, if applicable;

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- 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.

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## **G. 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, 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](#).

## **H. Submission Dates and Times**

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

## **I. Intergovernmental Review**

This FOA is not subject to Executive Order 12372 – Intergovernmental Review of Federal Programs.

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## **J. 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.

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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. Construction**

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

**iv. Foreign Travel**

Foreign travel costs are not allowable under this FOA.

**v. 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.

**vi. 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.

In general, whether a given project must apply this requirement is 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 (discussed in more detail in Appendix B), based in part on whether the infrastructure in question is publicly owned or serves a public function. For this FOA specifically, all projects subject to this FOA are considered "infrastructure" within the Buy America provision of BIL, based on implementation guidance from the Office of Management and Budget (OMB) issued on April 18, 2022.

Moreover, based on the OMB guidance, 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 Cooperative Agreement between DOE and the awardee will require each recipient: (1) to fulfill the commitments made in its application regarding the procurement of U.S.-produced products, and (2) to fulfill the commitments made in its application regarding the procurement of other key component metals and manufactured products domestically that are deemed available in sufficient and reasonably available quantities or of a satisfactory quality at the time of award negotiation. Applicants may seek waivers of these requirements in very limited

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circumstances and for good cause shown. Further details on requesting a waiver can be found in Appendix B and the terms and conditions of the applicant's award.

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

**vii. 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.

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- (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.

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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>.

**viii. 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.

**ix. 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.

#### **x. 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;

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- 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.

**xi. Prohibition related to Foreign Government-Sponsored Talent Recruitment Programs**

**a. Prohibition**

Persons participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk* are prohibited from participating in projects selected for federal funding under this FOA. Should an award result from this FOA, the recipient must exercise ongoing due diligence to reasonably ensure that no individuals participating on the DOE-funded project are participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the recipient must notify DOE within five (5) business days upon learning that an individual on the project team is or is believed to be participating in a foreign government talent recruitment program of a foreign country of risk. DOE may modify and add requirements related to this prohibition to the extent required by law.

**b. Definitions**

- 1. Foreign Government-Sponsored Talent Recruitment Program.** An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to

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further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

2. **Foreign Country of Risk.** DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

**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, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients and Contractors are required to 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, contractors and subcontractors.
- (3) Recipients, subrecipients, contractors and subcontractors 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 contractors for compliance evaluations. OFCCP's Technical Assistance Guide<sup>14F</sup> should be consulted to gain



an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

**xiii. Competition in Contracting**

If an eligible entity receiving a grant under this section uses grant funds to carry out repair or renovation through a contract, the eligible entity shall be required to ensure that the contract process—

- (1) through full and open competition, ensures the maximum practicable number of qualified bidders, including small, minority, and women-owned businesses; and
- (2) gives priority to businesses located in, or resources common to, the State or geographical area in which the repair or renovation under the contract will be carried out.

## **V. Application Review Information**

### **A. Technical Review Criteria**

**i. Concept Papers**

Concept Papers are evaluated based on consideration of the following factors. All sub-criteria are of equal weight.

**Concept Paper Criterion: Overall FOA Responsiveness and Viability of the Project (Weight: 100%)**

This criterion involves consideration of the following factors:

The proposed work, if successfully accomplished, would clearly meet the objectives as stated in the FOA including:

- Facility/Facilities demonstrate a facility needs assessment;
- Facility/Facilities serve a community considered high-need;
- Applicant demonstrates a large discrepancy between facility need and fiscal capacity;
- Proposed energy improvements will likely result in significant energy cost savings;

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- Proposed energy improvements will likely result in health and safety improvements;
- Project represents an innovation and scalability of technology packages partnership structures and/or financing options; and
- Applicant articulates a feasible plan to execute and maintain improvements

## ii. **Full Applications**

Applications will be evaluated against the technical review criteria shown below. All sub-criteria are of equal weight.

### **Criterion 1: Need (20%)**

This criterion involves consideration of the following factors:

- Degree to which the school facility demonstrates a high need for renovation, repair or improvement due to lack of capital funding;
- Extent to which the project demonstrates a large discrepancy between facility needs and fiscal capacity and ability to fund improvements; and
- Degree to which the project is based in and serves a community of high need (e.g. rural, high percentage of students qualifying for free and reduced priced lunch, Tribal, disadvantaged community, etc.)

### **Criterion 2: Benefits and Impact (40%)**

This criterion involves consideration of the following factors:

- Degree to which the proposed project will likely result in significant energy and cost savings;
- Degree to which the proposed project will likely result in health and safety benefits;
- Degree to which the proposed project will likely result in significant greenhouse gas emissions reductions;
- Degree to which the proposed project will likely result in improvements to student learning and growth; and
- Extent to which applicant's Community Benefits Plan illustrates project viability and social risk mitigation through community and labor engagement; investment in the American workforce; diversity, equity, inclusion and accessibility (DEIA) goals, and "Justice 40 Initiative" benefits to disadvantaged communities.

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**Criterion 3: Innovation and Scalability (20%)**

This criterion involves consideration of the following factors:

- Extent to which the proposed technology, process, or project is innovative;
- Extent to which the project is scalable both within the applicants LEA as well as how this could be replicable in other LEAs; and
- Extent to which the project leverages additional funds.

**Criterion 4: Qualifications and Workplan (20%)**

This criterion involves consideration of the following factors:

- The capability of the Project Manager(s) and the proposed team to address all aspects of the proposed work with a high probability of success;
- The qualifications, relevant expertise, and time commitment of the individuals on the team;
- Adequacy, reasonableness, and soundness of the project schedule, as well as annual Go/No-Go decisions prior to a budget period continuation application, interim milestones, and metrics to track process;
- Soundness of a plan to expeditiously address environmental, siting, and other regulatory requirements for the project, including evaluation of resilience to climate change;
- The likelihood that the partnering local educational agency or eligible entity will maintain, in good condition, any school and school facility that is the subject of improvements.

**iii. Criteria for Replies to Reviewer Comments**

DOE has not established separate criteria to evaluate Replies to Reviewer Comments. Instead, Replies to Reviewer Comments are attached to the original applications and evaluated as an extension of the Full Application.

**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 EERE'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

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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 exhibits technological diversity 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 level of industry involvement and demonstrated ability to accelerate demonstration and commercialization and overcome key market barriers;
- The degree to which the proposed project will accelerate transformational technological advances in areas that industry by itself is not likely to undertake because of technical and financial uncertainty;
- The degree to which the proposed project, or group of projects, represent a desired geographic distribution (considering past awards and current applications), including whether the project is in a community facing job and revenue loss in the energy transition;
- 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, when compared to the existing DOE project portfolio and other projects to be selected from the subject FOA, contributes to the total portfolio meeting the goals reflected in the Community Benefits Plan criteria.
- The degree to which the proposed project will employ procurement of U.S. iron, steel, manufactured products, and construction materials.

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- The level of buy-in and participation and by project participants as evidenced by letter(s) of commitment and community partnership documents.
- 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 supports complementary efforts or projects, which, when taken together, will best achieve the research goals and objectives.
- The degree to which the project's solution, schedule, or strategy will maximize deployment or replication.
- The degree to which the project promotes increased coordination with nongovernmental entities for deployment of technologies.
- The degree to which the applicants schools serve a high percentage of students eligible for free or reduced price lunch or are in National Education Statistics local codes 41, 42, or 43.
- The degree to which the application leverages private sector investment through energy-related performance contracting.
- The degree to which project milestones can be accelerated (without jeopardizing project outcomes) while minimizing disruption to school operations.

## **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 Interviews**

As part of the evaluation and selection process, DOE may invite one or more applicants to participate in pre-selection interviews. Pre-selection interviews are distinct from and more formal than pre-selection clarifications (See Section V.D.iii. of the FOA). The invited applicant(s) will meet with DOE representatives

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to provide clarification on the contents of the Full Applications and to provide DOE an opportunity to ask questions regarding the proposed project. The information provided by applicants to DOE through pre-selection interviews contributes to DOE's selection decisions.

DOE will arrange to meet with the invited applicants in person at DOE's offices or a mutually agreed upon location. DOE may also arrange site visits at certain applicants' facilities. In the alternative, DOE may invite certain applicants to participate in a one-on-one conference with DOE via webinar, videoconference, or conference call.

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

Participation in pre-selection interviews with DOE does not signify that applicants have been selected for award negotiations.

### **iii. 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.

**iv. 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 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.

**v. 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**

DOE 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 EERE 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 EERE Exchange. DOE may include general comments provided from reviewers on an applicant's Concept Paper in the encourage/discourage notifications.

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 EERE 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.

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**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 60 days. Applicants must designate a primary and a backup point-of-contact in EERE 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.

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**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. EERE Exchange**

Register and create an account on EERE Exchange at <https://eere-Exchange.energy.gov>. This account will then allow the user to register for any open EERE FOAs that are currently in EERE 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 EERE 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.**

Beginning on July 29, 2022\*, eXCHANGE will be updated to integrate with Login.gov. As of September 29, 2022\*, potential applicants will be required to have a Login.gov account to access EERE eXCHANGE. As part of the eXCHANGE registration process, new users will be directed to create an account in Login.gov. Please note that the email address associated with Login.gov must match the email address associated with the eXCHANGE account. For more information, refer to the Exchange Multi-Factor Authentication (MFA) Quick Guide in the Manuals section of eXCHANGE.

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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. Questions related to the registration process and use of the EERE Exchange website should be submitted to: [EERE-eXCHANGESupport@hq.doe.gov](mailto:EERE-eXCHANGESupport@hq.doe.gov)

**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](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 EERE 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 a 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. Flood Resilience**

Applications should indicate whether the proposed project location(s) is within a floodplain, how the floodplain was defined, and how future flooding will factor into the project's design. This information should be included in the Project Narrative of the full application. The base floodplain long used for planning has been the 100-year floodplain, that is, a floodplain with a 1.0 percent chance of flooding in any given year. As directed by Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (2015), Federal agencies, including DOE, continue to avoid development in a floodplain to the extent possible. When doing so is not possible, Federal agencies are directed to "expand management from the current base flood level to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and ensure that projects funded with taxpayer dollars last as long as intended." The higher flood elevation is based on one of three approaches: climate-informed science (preferred), freeboard value, or 0.2 percent annual flood change (500-year floodplain). EO 13690 and related information is available at <https://www.energy.gov/nepa/articles/eo-13690-establishing-federal-flood-risk-management-standard-and-process-further>.

**viii. 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.

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## 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*

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*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.

**ix. 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

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conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

**x. 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.

**xi. 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.

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## **xii. 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>.

## **xiii. Reporting**

Reporting requirements are identified on the Federal Assistance Reporting Checklist, attached to the award agreement. This helpful EERE checklist can be accessed at <https://www.energy.gov/eere/funding/eere-funding-application-and-management-forms>. See Attachment 2 Federal Assistance Reporting Checklist, after clicking on "Model Cooperative Agreement" under the Award Package section.

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
- Number and types of training provided, 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
- The use of the grant funds for energy improvements;
- The estimated cost savings realized by those energy improvements;

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- The results of any third-party investigation and analysis conducted relating to those energy improvements;
- The use of any utility programs and public benefit funds; and
- The use of performance tracking for energy improvements, such as—
  - (A) the Energy Star program established under section 324A of the Energy Policy and Conservation Act (42 U.S.C. 6294a); or
  - (B) the United States Green Building Council Leadership in Energy and Environmental Design (LEED) green building rating system for existing buildings.

**xiv. Go/No-Go Review**

Each project selected under this FOA will be subject to a periodic project evaluation referred to as a Go/No-Go Review. A Go/No-Go Review is a risk management tool and a project management best practice to ensure that, for the current phase or period of performance, technical success is definitively achieved and potential for success in future phases or periods of performance is evaluated, prior to actually beginning the execution of future phases. At the Go/No-Go decision points, DOE will evaluate project performance, project schedule adherence, the extent milestone objectives are met, compliance with reporting requirements, and overall contribution to the program goals and objectives. Federal funding beyond the Go/No-Go decision point (continuation funding) is contingent upon (1) availability of federal funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) recipient's technical progress compared to the Milestone Summary Table stated in Attachment 1 of the award; (4) recipient's submittal of required reports; (5) recipient's compliance with the terms and conditions of the award; (6) DOE's Go/No-Go decision; (7) the recipient's submission of a continuation application<sup>17</sup>; and (8) written approval of the continuation application by the Contracting Officer.

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<sup>17</sup> A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least ninety (90) days before the end of each budget period, the recipient must submit its continuation application, which includes the following information:

- i. A progress report on the project objectives, including significant findings, conclusions, or developments, and an estimate of any unobligated balances remaining at the end of the budget period. If the remaining unobligated balance is estimated to exceed 20 percent of the funds available for the budget period, explain why the excess funds have not been obligated and how they will be used in the next budget period.

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As a result of the Go/No-Go Review, DOE may, at its discretion, authorize the following actions: (1) continue to fund the project, contingent upon the availability of funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority; (2) recommend redirection of work under the project; (3) place a hold on federal funding for the project, pending further supporting data or funding; or (4) discontinue funding the project because of insufficient progress, change in strategic direction, or lack of funding.

The Go/No-Go decision is distinct from a non-compliance determination. In the event a recipient fails to comply with the requirements of an award, DOE may take appropriate action, including but not limited to, redirecting, suspending or terminating the award.

**xv. 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.

**xvi. 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:

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- ii. A detailed budget and supporting justification if there are changes to the negotiated budget, or a budget for the upcoming budget period was not approved at the time of award.
  - iii. A description of any planned changes from the SOPO and/or Milestone Summary Table.

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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.

**xvii. 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.

**xviii. Participants and Collaborating Organizations**

If selected for award negotiations, the selected applicant must submit a list of 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 personnel and collaborating organizations, and submit updated information during the life of the award. Note: the list of personnel only includes individuals working more than 160 hours per year on the award.

**xix. Current and Pending Support**

If selected for award negotiations, within 30 days of the selection notice, the selectee must submit current and pending support disclosures and resumes for any PIs or senior/key personnel. Throughout the life of the award, the recipient has an ongoing responsibility to submit 1) current and pending support disclosure statements and resumes for any new PI and senior/key personnel, and

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2) updated disclosures if there are changes to the current and pending support previously submitted to DOE. Also See Section IV.E.xi.

**xx. 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

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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.

**xxi. Interim Conflict of Interest Policy for Financial Assistance**

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy)<sup>18</sup> 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 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 financial conflicts of interest (FCOI) (i.e., managed and unmanaged/ unmanageable) 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

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<sup>18</sup> 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](#).





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 FCOIs (i.e., managed and unmanaged/unmanageable). 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.

## **xxii. 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:

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.

**xxiii. 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 \(SC\) \(osti.gov\)](#).

**xxiv. Cybersecurity Plan (if applicable)**

In accordance with BIL Section 40126, applicants selected for award negotiations must submit an acceptable cybersecurity plan to DOE prior to receiving funding.<sup>19</sup> These 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.

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).<sup>20</sup> The cybersecurity plan created pursuant to Section 40126 should

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<sup>19</sup> 42 U.S.C. § 18725

<sup>20</sup> 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

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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'. <sup>21</sup>

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

## 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: [SchoolsFOA@doe.gov](mailto:SchoolsFOA@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 EERE Exchange at: <https://eere-exchange.energy.gov>. **You must first select this specific FOA Number to view the questions and answers specific to this FOA.** EERE will attempt to respond to a question within 3 business days, unless a similar question and answer has already been posted on the website.

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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).

<sup>21</sup> 42 U.S.C. § 18725

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Questions related to the registration process and use of the EERE Exchange website should be submitted to: [EERE-ExchangeSupport@hq.doe.gov](mailto:EERE-ExchangeSupport@hq.doe.gov).

## VIII. Other Information

### A. FOA Modifications

Amendments to this FOA will be posted on the EERE 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. EERE 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

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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 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

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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.

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## **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.

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- 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.xix. 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:

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- 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

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work. This license extends to contractors and others doing work on behalf of the government.

## **N. Export Control**

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the United States to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of federal agencies and regulations that govern exports that are collectively referred to as “Export Controls”. All recipients and subrecipients are responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under a resulting award.

The recipient must immediately report to DOE any export control violations related to the project funded under the DOE award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

## **O. 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.

## **P. 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

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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-17-12 dated January 3, 2017).

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 the 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).

### **Q. 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.

### **R. 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

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proprietary information specific to their project. Specific dates for the webinar can be found on the cover page of the FOA.

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## APPENDIX A – COST SHARE INFORMATION

### Cost Sharing or Cost Matching

The terms “cost sharing” and “cost matching” are often used synonymously. Even the DOE Financial Assistance Regulations, 2 CFR 200.306, use both of the terms in the titles specific to regulations applicable to cost sharing. DOE almost always uses the term “cost sharing,” as it conveys the concept that non-federal share is calculated as a percentage of the Total Project Cost. An exception is the State Energy Program Regulation, 10 CFR 420.12, State Matching Contribution. Here “cost matching” for the non-federal share is calculated as a percentage of the federal funds only, rather than the Total Project Cost.

### How Cost Sharing Is Calculated

As stated above, cost sharing is calculated as a percentage of the Total Project Cost. FFRDC costs must be included in Total Project Costs. The following is an example of how to calculate cost sharing amounts for a project with \$1,000,000 in federal funds with a minimum 20% non-federal cost sharing requirement:

- Formula: Federal share (\$) divided by federal share (%) = Total Project Cost  
Example: \$1,000,000 divided by 80% = \$1,250,000
- Formula: Total Project Cost (\$) minus federal share (\$) = Non-federal share (\$)  
Example: \$1,250,000 minus \$1,000,000 = \$250,000
- Formula: Non-federal share (\$) divided by Total Project Cost (\$) = Non-federal share (%)  
Example: \$250,000 divided by \$1,250,000 = 20%

### What Qualifies For Cost Sharing

While it is not possible to explain what specifically qualifies for cost sharing in one or even a couple of sentences, in general, if a cost is allowable under the cost principles applicable to the organization incurring the cost and is eligible for reimbursement under a DOE grant or cooperative agreement, then it is allowable as cost share. Conversely, if the cost is not allowable under the cost principles and not eligible for reimbursement, then it is not allowable as cost share. In addition, costs may not be counted as cost share if they are paid by the federal

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government under another award unless authorized by federal statute to be used for cost sharing.

The rules associated with what is allowable as cost share are specific to the type of organization that is receiving funds under the grant or cooperative agreement, though are generally the same for all types of entities. The following references correlate with applicable cost-principle regulations by organization type:

- FAR Part 31 for For-Profit entities, (48 CFR Part 31); and
- 2 CFR Part 200 Subpart E - Cost Principles for all other non-federal entities.

In addition to the regulations referenced above, other factors may also come into play such as timing of donations and length of the project period. For example, the value of ten years of donated maintenance on a project that has a project period of five years would not be fully allowable as cost share. Only the value for the five years of donated maintenance that corresponds to the project period is allowable and may be counted as cost share.

Additionally, DOE generally does not allow pre-award costs for either cost share or reimbursement when these costs precede the signing of the appropriation bill that funds the award. In the case of a competitive award, DOE generally does not allow pre-award costs prior to the signing of the Selection Statement by the DOE Selection Official.

### **General Cost Sharing Rules on a DOE Award**

1. **Cash Cost Share** – encompasses all contributions to the project made by the recipient or subrecipient(s), for costs incurred and paid for during the project. This includes when an organization pays for personnel, supplies, equipment for their own company with organizational resources. If the item or service is reimbursed for, it is cash cost share. All cost share items must be necessary to the performance of the project.
2. **In-Kind Cost Share** – encompasses all contributions to the project made by the recipient or subrecipient(s) that do not involve a payment or reimbursement and represent donated items or services. In-Kind cost share items include volunteer personnel hours, donated existing equipment, donated existing supplies. The cash value and calculations thereof for all In-Kind cost share items must be justified and explained in the Cost Share section of the project Budget Justification. All cost share items must be necessary to the performance of the project. If questions exist, consult your DOE contact before filling out the In-Kind cost share section of the Budget Justification.

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3. Funds from other federal sources MAY NOT be counted as cost share. This prohibition includes FFRDC subrecipients. Non-federal sources include any source not originally derived from federal funds. Cost sharing commitment letters from subrecipients must be provided with the original application.
4. Fee or profit, including foregone fee or profit, are not allowable as project costs (including cost share) under any resulting award. The project may only incur those costs that are allowable and allocable to the project (including cost share) as determined in accordance with the applicable cost principles prescribed in FAR Part 31 for For-Profit entities and 2 CFR Part 200 Subpart E - Cost Principles for all other non-federal entities.

**DOE Financial Assistance Rules 2 CFR Part 200 as amended by 2 CFR Part 910**

As stated above, the rules associated with what is allowable cost share are generally the same for all types of organizations. Following are the rules found to be common, but again, the specifics are contained in the regulations and cost principles specific to the type of entity:

**(A)** Acceptable contributions. All contributions, including cash contributions and third party in-kind contributions, must be accepted as part of the prime recipient's cost sharing if such contributions meet all of the following criteria:

- (1)** They are verifiable from the recipient's records.
- (2)** They are not included as contributions for any other federally-assisted project or program.
- (3)** They are necessary and reasonable for the proper and efficient accomplishment of project or program objectives.
- (4)** They are allowable under the cost principles applicable to the type of entity incurring the cost as follows:
  - a. For-profit organizations. Allowability of costs incurred by for-profit organizations and those nonprofit organizations listed in Attachment C to OMB Circular A-122 is determined in accordance with the for-profit cost principles in 48 CFR Part 31 in the FAR, except that patent prosecution costs are not allowable unless specifically

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authorized in the award document. (v) Commercial Organizations. FAR Subpart 31.2—Contracts with Commercial Organizations; and

- b.** Other types of organizations. For all other non-federal entities, allowability of costs is determined in accordance with 2 CFR Part 200 Subpart E.

**(5)** They are not paid by the federal government under another award unless authorized by federal statute to be used for cost sharing or matching.

**(6)** They are provided for in the approved budget.

**(B) Valuing and documenting contributions**

**(1)** Valuing recipient's property or services of recipient's employees. Values are established in accordance with the applicable cost principles, which mean that amounts chargeable to the project are determined on the basis of costs incurred. For real property or equipment used on the project, the cost principles authorize depreciation or use charges. The full value of the item may be applied when the item will be consumed in the performance of the award or fully depreciated by the end of the award. In cases where the full value of a donated capital asset is to be applied as cost sharing or matching, that full value must be the lesser or the following:

- a.** The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or
- b.** The current fair market value. If there is sufficient justification, the Contracting Officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The Contracting Officer may accept the use of any reasonable basis for determining the fair market value of the property.

**(2)** Valuing services of others' employees. If an employer other than the recipient furnishes the services of an employee, those services are valued at the employee's regular rate of pay, provided these services are for the same skill level for which the employee is normally paid.

**(3)** Valuing volunteer services. Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved

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project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those markets in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

**(4) Valuing property donated by third parties.**

- a.** Donated supplies may include such items as office supplies or laboratory supplies. Value assessed to donated supplies included in the cost sharing or matching share must be reasonable and must not exceed the fair market value of the property at the time of the donation.
- b.** Normally only depreciation or use charges for equipment and buildings may be applied. However, the fair rental charges for land and the full value of equipment or other capital assets may be allowed, when they will be consumed in the performance of the award or fully depreciated by the end of the award, provided that the Contracting Officer has approved the charges. When use charges are applied, values must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:
  - i.** The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.
  - ii.** The value of loaned equipment must not exceed its fair rental value.

**(5) Documentation.** The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

- a.** Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

The basis for determining the valuation for personal services and property must be documented.



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## 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 Requirement, the following definitions apply:

**Components** are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

**Construction Materials** are an article, material, or supply—other than an item primarily of 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 used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

**Domestic Content Procurement Preference Requirement** – means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

- (A) all iron and steel used in the project are produced in the United States;
- (B) the manufactured products used in the project are produced in the United States; or
- (C) the construction materials used in the project are produced in the United States.

Also referred to as the **Buy America Requirement**.

**Infrastructure** includes, at a minimum, the structures, facilities, and equipment located in the United States, for: 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; and generation, transportation, and distribution of energy—including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

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**Manufactured Products** are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials' aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

**Primarily of iron or steel** means greater than 50% iron or steel, measured by cost.

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

**Public** – The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

#### **B. Buy America Requirement for Infrastructure Projects (Buy America Requirement)**

None of the award 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 is 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<sup>22</sup> are manufactured in the United States—this means

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<sup>22</sup> Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.



that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement 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 Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

The Buy America Requirement does not statutorily apply to Prime Recipients that are For-Profit Entities. However, the Buy America Requirement is applicable to a For-Profit Entity if: (1) it is a sub-recipient or sub-awardee under an award that contains the Buy America Requirement term and condition, or (2) it is the Prime Recipient that voluntarily chooses to use domestically sourced iron, steel, manufactured products, and constructions materials by stating so in its proposed application containing an infrastructure project. If the For-Profit Entity specifically states that it will comply with the Buy America Requirements in its application and it is selected for award, its award will contain a *Buy America Requirement for Infrastructure Projects* term and condition.

The Prime Recipient is responsible for flowing the Buy America Requirement down to all sub-awards, all contracts, subcontracts, and purchase orders for work performed under the proposed infrastructure project, including to For-Profit Entities when the For-Profit Entity is a sub-recipient or sub-awardee.

Recipients must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this award.

Recipients must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all sub-awardees, contractors and vendors to the

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recipient. Recipients must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

### **C. DOE Submission Requirements for Full Application**

Within the first two pages of the workplan or project description, applicants must provide a short statement on whether the project will involve the construction, alteration, maintenance and/or repair of infrastructure in the United States. The ultimate determination about whether a project includes infrastructure remains with DOE, but the applicant's statement will assist project planning and integration of the Buy America Requirement, which may impact the project's proposed budget and/or schedule.

### **D. Waivers**

In limited circumstances, DOE may waive the application of the Buy America Requirement in an award where DOE determines that:

- (1) applying the Buy America requirements would be inconsistent with the public interest (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 (Non-Availability); 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 (Unreasonable Cost).

DOE will only process waiver requests after an award has been made and for which the requests have been submitted in accordance with the term and conditions of the award. Waiver requests must be reviewed by DOE and the Office of Management and Budget's Made in America Office and are subject to a public comment period of no less than 15 calendar days.

DOE or OMB may request additional information for consideration of the waiver. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed by a Recipient.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);

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- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Requirement, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The following principles should be incorporated as minimum requirements in waiver request:

- Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the recipient should identify a reasonable, definite time frame (e.g., no more than one to

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two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).

- Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- Conditional: The recipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.

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## APPENDIX C – DEFINITION OF TECHNOLOGY READINESS LEVELS

|        |                                                                                      |
|--------|--------------------------------------------------------------------------------------|
| TRL 1: | Basic principles observed and reported                                               |
| TRL 2: | Technology concept and/or application formulated                                     |
| TRL 3: | Analytical and experimental critical function and/or characteristic proof of concept |
| TRL 4: | Component and/or breadboard validation in a laboratory environment                   |
| TRL 5: | Component and/or breadboard validation in a relevant environment                     |
| TRL 6: | System/subsystem model or prototype demonstration in a relevant environment          |
| TRL 7: | System prototype demonstration in an operational environment                         |
| TRL 8: | Actual system completed and qualified through test and demonstrated                  |
| TRL 9: | Actual system proven through successful mission operations                           |

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## APPENDIX D – LIST OF ACRONYMS

|       |                                                  |
|-------|--------------------------------------------------|
| BABA  | Build America Buy America Act                    |
| BIL   | Bipartisan Infrastructure Law                    |
| COI   | Conflict of Interest                             |
| CRADA | Cooperative Research and Development Agreement   |
| CET   | Critical and Emerging Technologies (CET)         |
| 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                              |
| EERE  | Energy Efficiency and Renewable Energy           |
| 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 |
| FY    | Fiscal Year                                      |
| GAAP  | Generally Accepted Accounting Principles         |
| HBCU  | Historically Black Colleges and Universities     |
| HSRD  | Human Subjects Research Database                 |
| HVAC  | Heating Ventilation and Air Conditioning         |
| IP    | Intellectual Property                            |
| IPMP  | Intellectual Property Management Plan            |
| IRB   | Institutional Review Board                       |
| LEA   | Local Educational Agency                         |
| LEED  | Leadership in Energy and Environmental Design    |
| M&O   | Management and Operating                         |
| 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 Administration         |

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|       |                                                   |
|-------|---------------------------------------------------|
| OFCCP | Office of Federal Contractor Compliance           |
| OHRP  | Office of Human Research Protection               |
| OIG   | Office of Inspector General                       |
| OMB   | Office of Management and Budget                   |
| OSTI  | Office of Scientific and Technical Information    |
| OTA   | Other Transactions Authority                      |
| PII   | Personal Identifiable Information                 |
| R&D   | Research and Development                          |
| RFI   | Request for Information                           |
| RFP   | Request for Proposal                              |
| SAM   | System for Award Management                       |
| SCEP  | State and Community Energy Programs               |
| SOPO  | Statement of Project Objectives                   |
| SPOC  | Single Point of Contact                           |
| SSN   | Social Security Numbers                           |
| 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                                     |

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