



# 2024 RENEW AMERICA'S SCHOOLS OFFICIAL PRIZE

## APPENDICES B - E: COOPERATIVE AGREEMENT REQUIREMENTS

March 2024

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## APPENDIX B – COOPERATIVE AGREEMENT OVERVIEW

### I. Cooperative Agreement Description

#### A. Cooperative Agreement

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 V.B.ix. of the Cooperative Agreement for more information on what substantial involvement may involve.

#### B. 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 (DEIA); and (4) contribute to the President’s goal that 40% of the overall project benefits of certain federal investments flow to disadvantaged communities (the Justice40 Initiative)<sup>1</sup>. 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.

Selectees are encouraged to submit Community and Labor Partnership Documentation from established labor and community-based organizations that demonstrate the selectee’s ability to achieve the above goals as outlined in the Community Benefits Plan. Within the Community Benefits Plan, the selectee is encouraged to provide specific detail on how to ensure the delivery of measurable community and job benefits, ideally by using negotiated agreements between the selectee and the community, and/or the selectee and labor unions referred to collectively here as “Workforce and Community Agreements.” These include good

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<sup>1</sup> The Justice40 initiative, established by E.O. 14008, sets a goal that 40% of the overall benefits of certain federal investments flow to disadvantaged communities that have been marginalized by underinvestment and overburdened by pollution. Consistent with E.O. 14008 and Justice40 interim implementation guidance, M-21-28 and M-23-09, DOE recognizes disadvantaged communities as identified by the White House Council on Environmental Quality’s Climate and Economic Justice Screening Tool (CEJST), and also recognizes that all Federally Recognized Tribes and Tribal entities are disadvantaged communities, whether or not they have land.



neighbor agreements, community benefits agreements, community workforce agreements, project labor agreements, and other collective bargaining agreements. See Section 1.6 of the Official Rules Document for the Community Benefits Plan content requirements.

### **C. Authorizing Statutes**

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

Section 40541 of the BIL codified at 42 U.S.C. § 18831.

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

### **D. Notice of Bipartisan Infrastructure Law-Specific Requirements**

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

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

Recipients of funding appropriated by the BIL must comply with requirements of all applicable federal, state, and local laws, regulations, DOE policy and guidance, and instructions in this Cooperative Agreement Funding Opportunity. Recipients must flow down requirements to subrecipients to ensure recipients comply with the requirements.



## II. Award Information

### A. Award Overview

#### i. Estimated Funding

See Section 2.3.2 in the Rules Document and Table 2.

#### ii. Period of Performance

See Section 2.3.3 in the Rules Document.

## III. Eligibility Information

If the application does not meet the eligibility requirements outlined in the Official Prize Rules, it will be considered ineligible and removed from further evaluation.

### A. Cost Sharing

Applicants are bound by the cost share proposed in their application package if selected for award negotiations.

Cooperative Agreements resulting from this Funding Opportunity will have blended cost share. At least 5% minimum cost share is required for Phase 2: Budget Period 1 (“Strategic Plan + Energy Audits”), and at least 25% minimum cost share is required for Phase 3: Budget Period 2 (“Implementation”). Cost share must be at least 5% or 25% for Budget Period 1 and Budget Period 2, respectively, depending on each Budget Period’s 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.)

To assist selectees in calculating proper cost share amounts, DOE has included a cost share information sheet and sample cost share calculation in Appendix C of the Cooperative Agreement.

#### i. Legal Responsibility

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



The Selectee 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 if the cost share requirement for the project is met.

**iii. Cost Share Types and Allowability**

Every cost share contribution must be allowable under the applicable federal cost principles, as described in Appendix C of the Cooperative Agreement. In addition, cost share must be verifiable upon submission of award negotiation documents.

Project teams may provide cost share in the form of cash or in-kind contributions. Cost share must 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 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 prime recipient and subrecipient(s) 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 DOE Contracting Officer and incorporated into the project budget before the expenditures are incurred.

Selectees are encouraged to refer to 2 CFR 200.306 and as supplemented by 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**

Selectees are required to provide written assurance of their proposed cost share contributions in their award negotiation documents.

Upon selection for award negotiations, selectees are required to provide additional information and documentation regarding their cost share contributions. Please refer to Appendix C of this Cooperative Agreement Requirements Document.

**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.



## **B. Questions Regarding Eligibility**

DOE will not make eligibility determinations for potential selectees prior to the date on which applications to this Funding Opportunity must be submitted. The decision whether to submit an application in response to this Prize to Cooperative Agreement lies solely with the participants(s) that chose to enter into the Prize to Cooperative Agreement.

## **IV. Pre-Award Information**

### **A. 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**

Selectees 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. Any such costs are unallowable under a Cooperative Agreement.

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 Funding Opportunity is subject to NEPA. Selectees should carefully consider and should seek legal counsel or other expert advice before taking any action related to the proposed project that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE completing the NEPA review process.



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

### iii. Performance of Work in the United States

#### 1. Requirement

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

#### 2. Failure to Comply

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

### iii. Construction

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

DOE strongly encourages the use of project labor agreements (PLAs) in connection with construction projects. A PLA is a pre-hire agreement between a private entity (or entities) and a labor organization (or organizations) representing individuals who will be working on the construction project. Competitors that commit to using best-practice project labor agreements will generally be likely to produce a construction workforce plan that meets the criteria in this FOA. By contrast, competitors that do not commit to using a PLA will be required to submit workforce continuity plans and



show that they have taken other measures to reduce the risk of delays in project delivery.

For large construction projects, DOE may require a PLA. Assessment of applicability will be conducted on a case-by-case basis.

**iv. Foreign Travel**

Foreign travel costs are not allowable under this Funding Opportunity.

**v. Buy America Requirements for Infrastructure Projects**

Pursuant to the Build America Buy America Act, subtitle IX of BIL (Buy America or “BABA”), federally assisted projects that involve infrastructure work, undertaken by applicable recipient types, require that:

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

Whether a given project must apply this requirement is 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 D), based in part on whether the infrastructure in question serves a public function. For this Funding Opportunity specifically, DOE Finds that all projects subject to this Funding Opportunity are considered “infrastructure” within the Buy America provision of BIL, based on implementation guidance from the Office of Management and Budget (OMB) issued on October 25, 2023.

Unless the Federal award specifically indicates otherwise, subawards should conform to the terms and conditions of the Federal award from which they flow. For example, if a Federal agency obligates an award to a State government as a direct recipient, and the State issues a subaward to a for-profit entity to carry out the project as a subrecipient, then the Buy America preference requirements included in the Federal award would flow down to the for-profit entity. Finally, for all competitors—both non-Federal entities and for-profit entities—DOE is including a program policy factor that the Selection Official may consider in determining which Applications to select for award negotiations that considers whether the competitor 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. Selectees may seek waivers of these requirements in very limited



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

Selectees are strongly encouraged to consult Appendix D for more information.

**vi. Davis-Bacon Act Requirements**

Projects awarded under this Funding Opportunity 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 Funding Opportunity 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).

Selectees 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 Funding Opportunity 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).

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

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
- (2) ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from contracts and subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.
- (3) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (4) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (5) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the United States Department of Labor ("DOL") upon request, as required by 29 CFR 5.6(a)(2).



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

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

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

(9) notifying the DOE 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 DOE 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.

Recipients of funding under this Funding Opportunity 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>.

DOE has contracted with [LCPTracker](#), a third-party DBA electronic payroll compliance software application. Recipients of funding under this Funding Opportunity must ensure the timely electronic submission of weekly certified payrolls through LCPTracker as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access. LCPTracker allows for certified payroll reports and workforce data to be uploaded electronically, 24 hours a day, 7 days per week and currently partners with several commercially available payroll systems. If a



Contractor uses a different payroll system, LCPtracker provides a free, spreadsheet template they can use to map out their payroll file, which would allow them to upload their employee and payroll data into the system. LCPtracker validation system checks payrolls for federal Davis-Bacon prevailing wage requirements by flagging mathematical errors or omission discrepancies for the Contractor to review on a report. Examples include base hourly rate, total hourly rate, overtime, doubletime, apprentice approval, and fringe benefit contributions. Additionally, LCPTracker utilizes industry standard eSignature technology, thus allowing Contractors to electronically sign payroll reports versus using a wet signature. Individual program offices will coordinate with recipients on access and training.

## **vii. 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” ([grants.gov/forms/forms-repository/sf-424-individual-family](https://grants.gov/forms/forms-repository/sf-424-individual-family)) 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.

## **viii. Risk Assessment**

Pursuant to 2 CFR 200.206, DOE will conduct an additional review of the risk posed by applications submitted under this Funding Opportunity. 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 supplemented by 2 CFR 910;
3. History of performance;
4. Audit reports and findings; and
5. The selectee’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 a selectee’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 selectee.



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 selectee. As part of the research, technology, and economic security risk review, DOE may contact the selectee and/or proposed project team members for additional information to inform the review.

**ix. 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 the following items with their requests for reimbursement:

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

**x. 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 Funding Opportunity. Should an award result from this Funding Opportunity, 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 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.

**xi. 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 selectees 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 Guide14F should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

Additionally, for construction projects valued at \$35 million or more and lasting more than one year, the recipients, subrecipients, contractors, and subcontractors may be selected by the OFCCP to participate in the *Mega Construction Project Program*. DOE, under relevant legal authorities including Sections 205 and 303(a) of Executive Order 11246, will require participation as a condition of the award. This program offers extensive compliance assistance with EO 11246. For more information regarding this program, see

<https://www.dol.gov/agencies/ofccp/construction/mega-program>.

## xii. **Competition in Contracting**

A Selectee receiving a Cooperative Agreement may use award funds to carry out repair or renovation through a contract, so long as the Selectee ensures 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.

## xiii. **Foreign Collaboration Considerations**

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



services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the recipient's standard policies and procedures.

## V. Award Administration Information

### A. Award Notices

#### i. Successful Selectee

Successful applicants will receive written notification that they have been selected for award negotiations. Receipt of a notification letter selecting an application for award negotiations does not authorize the selectee 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. Selectees do not receive an award until award negotiations are complete and the DOE Contracting Officer executes the funding agreement, accessible by the prime recipient in [FedConnect](#).

The award negotiation process will take approximately 6-8 months. Selectees must designate a primary and a backup point-of-contact with whom DOE will communicate to conduct award negotiations. The selectee must be responsive during award negotiations (i.e., provide requested documentation) and meet the negotiation deadlines. If the selectee 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.A. ii. of the Funding Opportunity for guidance on pre-award costs.

#### ii. Unsuccessful Selectee

DOE shall promptly notify in writing each competitor 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 during negotiations in response to this Funding Opportunity, and it is vital that selectees address these items as soon as possible. Some may take several weeks, and failure to complete them could interfere with a selectee's ability to negotiate a Cooperative Agreement or to meet the negotiation deadlines and receive an award if the application is selected. These requirements are as follows:

##### 1. System for Award Management

Register with the SAM at <https://www.sam.gov>. Please update your SAM registration annually.



- 2. FedConnect**  
Register in FedConnect at <https://www.fedconnect.net>.
  - 3. Grants.gov**  
Register in Grants.gov (<http://www.grants.gov>) to receive automatic updates when Amendments to this Funding Opportunity are posted. However, please note that applications will not be accepted through Grants.gov.
  - 4. Electronic Authorization of Applications and Award Documents**  
Submission of an application and supplemental information under this Funding Opportunity through electronic systems used by the DOE, including HeroX and FedConnect, 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 supplemented by 2 CFR Part 910.
  - iii. Foreign National Participation**  
All selectees of an award under this Funding Opportunity and project participants (including subrecipients and contractors) who anticipate involving foreign nationals in the performance of an award, may be required to provide DOE with specific information about each foreign national to satisfy requirements for foreign national participation. A "foreign national" is defined as any person who is not a United States citizen by birth or naturalization. The volume and type of information collected may depend on various factors associated with the award. DOE concurrence may be required before a foreign national can participate in the performance of any work under an award.  
  
DOE may elect to deny foreign national's participation in the award. Likewise, DOE may elect to deny a foreign national's access to DOE sites, information, technologies, equipment, programs, or personnel.
  - iv. Subaward and Executive Reporting**  
Additional administrative requirements necessary for DOE grants and Funding Opportunity 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 Cooperative Agreement 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.

**National Historic Preservation Act (NHPA)**

All Selectees must comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) prior to using Federal funds. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. DOE and Selectees must consider the effects of project activities on historic properties, pursuant to Section 106 of the NHPA. DOE will perform a NHPA review under the umbrella of its NEPA review.

**vii. Flood Resilience**

Selectees 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. 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. **Selectee Representations and Certifications**

### 1. **Lobbying Restrictions**

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

### 2. **Corporate Felony Conviction and Federal Tax Liability Representations**

In submitting an application in response to this Prize to Cooperative Agreement, the competitor 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 Funding Opportunity the competitor represents that:

- a. It **does not and will not** require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.
- b. It **does not and will not** use any federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:
  - (1) *“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2)*



*communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling.”*

- (2) The limitation above shall not contravene requirements applicable to Standard Form 312 Classified Information Nondisclosure Agreement (<https://fas.org/sgp/othergov/sf312.pdf>), Form 4414 Sensitive Compartmented Information Disclosure Agreement (<https://fas.org/sgp/othergov/intel/sf4414.pdf>), or any other form issued by a federal department or agency governing the nondisclosure of classified information.
- (3) Notwithstanding the provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

**ix. Statement of Substantial Involvement**

DOE has substantial involvement in work performed under awards made as a result of this Funding Opportunity. 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. Substantial involvement includes but is not limited to the following:

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



## x. 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>.

## xi. Reporting

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

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

- New manufacturing production or recycling capacity
- Jobs data, including:
  - Number and types of jobs provided, wages and benefits paid
  - Workforce demographics, including local hires
  - Efforts to minimize risks of labor disputes and disruptions
  - Contributions to training; employee certificates and training credentials; ratio of apprentice- to journey-level workers employed
  - Number of trainings completed, trainees placed in full-time employment, or number of trainings with workforce partnerships involving employers, community-based organizations, or labor unions
- Justice and Equity data, including:
  - Minority Business Enterprises, minority-owned businesses, woman-owned businesses, and veteran-owned businesses acting as vendors and subcontractors 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 generation and utilization

## xii. Go/No-Go Review

Each project selected under this Funding Opportunity 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 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>2</sup> and (8) written approval of the continuation application by the Contracting Officer.

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.

### **xiii. Conference Spending**

The recipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant or Cooperative Agreement was awarded that would defray the cost to the U.S. government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the U.S. government would otherwise exceed \$20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

### **xiv. Uniform Commercial Code (UCC) Financing Statements**

Per 2 CFR 910.360 (Real Property and Equipment) when a piece of equipment is purchased by a for-profit recipient or subrecipient with federal funds, and when the

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<sup>2</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.
- 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.



federal share of the financial assistance agreement is more than \$1 million the recipient or subrecipient must:

Properly record, and consent to the Department's ability to properly record if the recipient fails to do so, UCC financing statement(s) for all equipment in excess of \$5,000 purchased with project funds. These financing statement(s) must be approved in writing by the DOE 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 DOE 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 DOE Contracting Officer may direct.



## APPENDIX C – BLENDED 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 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

The following example shows the math for calculating required cost share for a project with \$7.5 million in federal funds and two Budget Periods requiring different non-federal cost share percentages:

| Task                                                  | Proposed Federal Share | Federal Share % | Recipient Share % (minimum) |
|-------------------------------------------------------|------------------------|-----------------|-----------------------------|
| Budget Period 1<br>(“Strategic Plan + Energy Audits”) | \$500,000              | 95%             | 5%                          |
| Budget Period 2<br>(“Implementation”)                 | \$7,000,000            | 75%             | 25%                         |

Federal share (\$) divided by federal share (%) = Budget Period Cost

Each budget period must be calculated individually as follows:

#### **Budget Period 1**

\$500,000 divided by 95% = \$526,315.8 (Budget 1 Cost)

Budget Period 1 Cost minus federal share = non-federal share

\$526,315.8 - \$500,000 = \$26,315.8 (non-federal share)

#### **Budget Period 2**

\$7,000,000 divided by 75% = \$9,333,333.33 (Budget 2 Cost)

Budget Period 2 Cost minus federal share = non-federal share

\$9,333,333.33 - \$7,000,000 = \$2,333,333.33 (non-federal share)



The calculation may then be completed as follows:

| Budget Periods  | \$ Federal Share | % Federal Share | \$ Non-Federal Share | % Non-Federal Share | Total Project Cost |
|-----------------|------------------|-----------------|----------------------|---------------------|--------------------|
| Budget Period 1 | \$500,000        | 95%             | \$26,315.8           | 5%                  | \$526,315.8        |
| Budget Period 2 | \$7,000,000      | 75%             | \$2,333,333.33       | 25%                 | \$9,333,333.33     |
| Totals          | \$7,500,000      |                 | \$2,359,649.13       |                     | \$9,859,649.13     |

Blended Cost Share %

Non-federal share (\$2,359,649.13) divided by Total Project Cost (\$9,859,649.13) = 23.9% (non-federal)

Federal share (\$7,500,000) divided by Total Project Cost (\$9,859,649.13) = 76.1% (federal)

### 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 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-principal 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.
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 Cooperative Agreement negotiation documents.
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 supplemented 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 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 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.



## APPENDIX D – 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, based both on the statute and OMB Guidance Document dated October 25, 2023, the following definitions apply:

*Component* means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

“Construction materials” means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- (i) Non-ferrous metals;
- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass);
- (iv) Fiber optic cable (including drop cable);
- (v) Optical fiber;
- (vi) Lumber;
- (vii) Engineered wood; and
- (viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

*Buy America Preference* means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States. Also referred to as the **Buy America Requirement**.

“Infrastructure” means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment 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 structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

Moreover, according to the OMB Guidance Document:

Section 184.4(d) [of 2 CFR part 184] explains that Federal agencies should interpret the term “infrastructure” broadly and consider the description provided in section 184.4(c) as illustrative and not exhaustive. Section 184.4(d) also explains that, when determining if a particular construction project of a type not listed in section 184.4(c) constitutes “infrastructure,” agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Through this memorandum, OMB notes that projects with the former “public” qualities have greater indicia (or distinguishing features) of “infrastructure,” while projects with the latter “private” quality have fewer. As a result, projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute a public infrastructure project for purposes of BABA. Federal agencies are strongly encouraged to consult with OMB when making such determinations or if they are uncertain about the applicability of this guidance to any particular infrastructure program.

The Agency, not the selectee, will have the final say as to whether a given project includes infrastructure, as defined herein. Accordingly, in cases where the “public” nature of the infrastructure is unclear, but the other relevant criteria are met, DOE strongly recommends that selectees complete their application with the assumption that Buy America requirements will apply to the proposed project.

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

(1) Articles, materials, or supplies that have been:

(i) Processed into a specific form and shape; or

(ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under § 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under § 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

**A. 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>3</sup> are manufactured in the United States—this means 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.

Consistent with M-24-02, for-profit organizations are not considered non-Federal entities. However, this guidance does not alter legal authorities that agencies may have to include the Buy America preference, or other domestic content requirements, in awards of Federal financial assistance issued to for-profit organizations. Federal agencies may consider applying this guidance to for-profit entities consistent with their legal authorities. For example, 2 CFR 200.101(a)(2) allows Federal agencies to apply certain subparts of part 200 to for-profit entities.

Unless the Federal award specifically indicates otherwise, subawards should conform to the terms and conditions of the Federal award from which they flow. For example, if a Federal agency obligates an award to a State government as a direct recipient, and the State issues a subaward to a for-profit entity to carry out the project as a subrecipient, then the Buy America preference requirements included in the Federal award would flow down to the for-profit entity. 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.

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<sup>3</sup> Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.



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 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.

### **B. DOE Submission Requirements for Application**

Within the first two pages of the workplan or project description, selectees 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 selectee's statement will assist project planning and integration of the Buy America Requirement, which may impact the project's proposed budget and/or schedule.

### **C. Waivers**

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

In limited circumstances, DOE may waive the application of the Buy America 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);
- 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 to 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 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.



## APPENDIX E – LIST OF ACRONYMS

|        |                                                                            |
|--------|----------------------------------------------------------------------------|
| ASHRAE | American Society of Heating, Refrigerating, and Air-Conditioning Engineers |
| 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                                                   |
| MSI    | Minority-Serving institution                                               |
| MYPP   | Multi-Year Program Plan                                                    |
| NDA    | Non-Disclosure Acknowledgement                                             |
| NCES   | National Center for Education Statistics                                   |
| NEPA   | National Environmental Policy Act                                          |
| NNSA   | National Nuclear Security Administration                                   |
| NREL   | National Renewable Energy Laboratory                                       |
| 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                                                       |



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|      |                                                   |
|------|---------------------------------------------------|
| 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                                     |