

**Financial Assistance
Notice of Funding Opportunity
Part 2**



U.S. Department of Energy (DOE)
Advanced Materials & Manufacturing Technologies Office
(AMMTO)

The Circular Supply Chains Accelerator

Notice of Funding Opportunity Number: DE-FOA-0003512

This is Part 2 of the Notice of Funding Opportunity (NOFO). The NOFO Part 2 is intended as a companion document to the NOFO Part 1. The NOFO Part 1 describes the specific DOE programmatic goals and evaluation criteria, eligibility, and other components that are specific to each funding opportunity.

Part 2 includes fixed DOE requirements that generally do not change from NOFO to NOFO. This document includes standard information for the application phase and describes expectations for award negotiations and post-award requirements for selected applications.

Applicants should review both the NOFO Part 1 and the NOFO Part 2 prior to applying.

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I. Get Registered

There are several required one-time actions applicants must take before applying to this NOFO. Some of these actions may take several weeks, so it is vital applicants build in enough time to complete them. Failure to complete these actions could interfere with application or negotiation deadlines or the ability to receive an award if selected. If you are already registered, project make sure your registration is active and up to date. All registrations are free.

[See Step 3: Submit Your Application](#)

SAM.gov Registration

You must have an active account with [SAM.gov](#), the System for Award Management (SAM). This includes having a Unique Entity Identifier (UEI).

- **What is it?** SAM is a federal procurement database. All entities that want to do business with the federal government MUST be registered in SAM.
- Existing SAM registrations must be updated annually.
- **Duration** to complete: can take several weeks.
- **Registration Link:** <https://sam.gov/content/home>
 - **NOTE:** Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.
- **HELP:** <https://sam.gov/content/help> Applicants must allow several weeks for the SAM process to complete. All registrations rely on completion of the SAM registration. (START Early)

Unique Entity Identifier (UEI)

- **What is it?** UEI is a non-proprietary identifier that has replaced the Federal Government use of Data Universal Numbering System (DUNS) number effective April 4, 2022.
- Applicants must obtain an UEI from the SAM to uniquely identify the entity. The UEI is available in the SAM entity registration record.
 - **Note:** Subawardees/subrecipients at all tiers must also obtain an UEI from the SAM and provide the UEI to the recipient before the subaward can be issued.
- **Duration** to complete: can take several weeks.
- **Registration Link:** <https://sam.gov/content/entity-registration>
- **HELP:** https://www.fsd.gov/gsafsd_sp

Grants.gov Registration

You must have an active [Grants.gov](#) registration to receive automatic updates when modifications to this NOFO are posted. Doing so requires a Login.gov registration as well.

- **What is it?** Website used to enable federal grant-making agencies to notify potential applicants of funding opportunities. Please note that letters of intent, concept papers, and applications will not be accepted through Grants.gov (see eXCHANGE information below).
- Step-by step instructions for applicants at [How to Apply for Grants](#) website <https://www.grants.gov/applicants/grant-applications/how-to-apply-for-grants>
- **Duration** to complete: can take several days.

- **Registration Link:** <https://grants.gov>
- **HELP:** <https://apply07.grants.gov/help/html/help/index.htm#t=GetStarted%2FGetStarted.htm>

eXCHANGE

Register with eXCHANGE, with Login.gov or ID.me.

- **What is it?** The Department of Energy (DOE) has several eXCHANGE databases that are useful in searching for funding opportunities.
- 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.
- Submission of application documents in any DOE eXCHANGE system constitutes the authorized representative's approval and electronic signature.
- **Duration** to complete: can take two to three days.
- **Registration Links:**
 - Energy Efficiency and Renewable Energy eXCHANGE: [EERE eXCHANGE: Funding Opportunity \(energy.gov\)](#)
 - Indian Energy eXCHANGE: [IE-Exchange: Funding Opportunity \(energy.gov\)](#)
 - Infrastructure eXCHANGE: [Infrastructure eXCHANGE: Funding Opportunity \(energy.gov\) supporting the following DOE Offices:](#)
 - Office of Cybersecurity, Energy Security, & Emergency Response (CESER)
 - Office of Federal Energy Management Programs (FEMP)
 - Grid Deployment Office (GDO)
 - Office of Manufacturing and Energy Supply Chains (MESCC)
 - Office of State and Community Energy Programs (SCEP)

DISCLAIMER:

Applicants are discouraged from submitting information considered proprietary unless it is deemed essential for proper evaluation of the application. If the application contains information that the applicant organization considers to be trade secrets, information that is commercial or financial, or information that is privileged or confidential, the pages containing that information should be identified as specified in the application instructions. When such information is included in the application, it is furnished to the federal government in confidence, with the understanding that the information will be used or disclosed only for evaluation of the application.

The information contained in the application will be protected by DOE from unauthorized disclosure, consistent with the need for merit review of applications of financial assistance awards to assure the integrity of the competitive process and the accuracy and completeness of the information. If a federal financial assistance award is made as a result of or in connection with an application, the federal government has the right to use or disclose the information to the extent authorized by law. This restriction does not limit the federal government's right to use the information if it is obtained without restriction from another source. Information included in the applicant's Community Benefits Plan, or the entire Community Benefits Plan, may be shared with the public at selection at the discretion of DOE, and Applicants should specifically mark any information in the Community Benefits considered trade secrets, commercial, financial or privileged or confidential as per application instructions.

II. Eligibility

Please refer to the [NOFO Part 1, Eligibility](#) for the eligibility criteria specific to your application. This section includes additional information to help applicants understand the standard eligibility requirements across all DOE NOFOs.

A. Cost Sharing

This section contains additional information to help applicants understand federal cost sharing requirements. Please refer to the [NOFO Part 1, Eligibility—Cost Sharing](#) for the cost sharing criteria specific to your application.

1. Legal Responsibility

Although the cost share requirement applies to the entire project, including work performed by members of the project team other than the recipient, the recipient is legally responsible for paying the entire cost share. The recipient's cost share obligation is expressed in the Assistance Agreement as a static amount in U.S. dollars (cost share amount) and as a percentage of the Total Project Cost (cost share percentage). If the funding agreement is terminated prior to the end of the project period, the recipient is required to contribute at least the cost share percentage of total expenditures incurred through the date of termination.

The 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.

1. Legal Responsibility

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 entire project is met.

2. Cost Share Types and Allowability

Cost share must meet requirements set forth in [2 C.F.R. §§ 200.306](#) and [910.130](#), and cost principles set forth in [2 C.F.R. §§ 200.400-476](#) and [2 C.F.R. §§ 910.352](#). In addition, cost share must be verifiable upon submission of the full application. Cost share may be provided in the form of cash or cash equivalents, or in-kind contributions. Cost share must come from non-federal sources (unless otherwise allowed by law), such as project participants, state or local governments, or other third-party financing. DOE Loan Guarantees cannot be leveraged by applicants to provide the required cost share or otherwise support the same scope that is proposed under a project.

Cost share may be provided by the 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. Please read the Cost Sharing regulation 2 CFR 200.306 for examples of allowable in-kind contributions.

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

Funding or property received from state or local governments may be used to meet the cost share requirement, so long as the federal government did not provide the funding to the state or local government.

Cost share contributions must be specified in the project budget, verifiable from the 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, DOE will review the cost share dollars according to the same federal regulations as federal dollars to the project. Every cost share contribution must be reviewed and approved in advance by the Grants Officer and incorporated into the project budget before the expenditures are incurred.

3. Unallowable Cost Share Sources

The recipient and subrecipient(s) may not use the following sources to meet cost share obligations:

- Cost share derived from federal sources (unless otherwise authorized by law).
- Cost share that does not meet:
 - Requirements set forth in 2 C.F.R. §§ 200.306 and 910.130;
 - Cost principles set forth in 2 C.F.R. §§ 200.400-476 and 2 C.F.R. §§ 910.352;
 - For State Energy Programs, refer to 10 C.F.R. §§ 420.
- Cost share derived from the DOE loan program.
- 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);
- Expenditures that were reimbursed under a separate federal program.
- Cash or in-kind contributions used to meet cost share requirements for another federal project or program;
- Existing data as an in-kind contribution (e.g., data owned by an entity, that is not routinely sold commercially but is instead donated to the project and assigned a value);
- In general, deferred or avoided costs such as unrealized tax credits; or
- If applicable, other items as identified by DOE Programs and as specified in the applicable **NOFO Part 1, Eligibility—Cost Sharing**.

Cost share contributions must be specified in the project budget, verifiable from the 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 Grants Officer and incorporated into the project budget before the expenditures are incurred.

4. 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.

5. Cost Share Verification

Applicants are required to provide written assurance of their proposed cost share contributions in their applications. If selected for award negotiations, applicants are required to provide additional information and documentation regarding their cost share contributions. Please refer to the [NOFO Part 1, Eligibility—Cost Sharing](#) for specific requirements.

6. Cost Share Calculation Examples

Cost sharing is calculated as a percentage of the Total Project Cost. FFRDC costs must be included in Total Project Costs.

Example 1, Standard Cost Share Calculation

The following is an example of how to calculate cost sharing amounts for a project with \$1 million 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%

Example 2, Blended Cost Share Calculation

The following example shows the math for calculating required cost share for a project with \$2 million in federal funds, with four tasks requiring different non-federal cost share percentages:

| Task | Proposed Federal Share | Federal Share % | Recipient Share % |
|------------------------|------------------------|-----------------|-------------------|
| Task 1 (R&D) | \$1,000,000 | 80% | 20% |
| Task 2 (R&D) | \$500,000 | 80% | 20% |
| Task 3 (Demonstration) | \$400,000 | 50% | 50% |
| Task 4 (Outreach) | \$100,000 | 100% | 0% |

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

Each task must be calculated individually as follows:

Task 1

- \$1,000,000 divided by 80% = \$1,250,000 (Task 1 Cost)
- Task 1 Cost minus federal share = non-federal share
- \$1,250,000 - \$1,000,000 = \$250,000 (non-federal share)

Task 2

- \$500,000 divided 80% = \$625,000 (Task 2 Cost)
- Task 2 Cost minus federal share = non-federal share
- \$625,000 - \$500,000 = \$125,000 (non-federal share)

Task 3

- \$400,000 / 50% = \$800,000 (Task 3 Cost)
- Task 3 Cost minus federal share = non-federal share
- \$800,000 - \$400,000 = \$400,000 (non-federal share)

Task 4

- Federal share = \$100,000
- Non-federal cost share is not mandated for outreach = \$0 (non-federal share)

The calculation may then be completed as follows:

| Tasks | \$ Federal Share | % Federal Share | \$ Non-Federal Share | % Non-Federal Share | Total Project Cost |
|--------|------------------|-----------------|----------------------|---------------------|--------------------|
| Task 1 | \$1,000,000 | 80% | \$250,000 | 20% | \$1,250,000 |
| Task 2 | \$500,000 | 80% | \$125,000 | 20% | \$625,000 |
| Task 3 | \$400,000 | 50% | \$400,000 | 50% | \$800,000 |
| Task 4 | \$100,000 | 100% | \$0 | 0% | \$100,000 |
| Totals | \$2,000,000 | | \$775,000 | | \$2,775,000 |

Blended Cost Share %

- Non-federal share (\$775,000) divided by Total Project Cost (\$2,775,000) = 27.9% (non-federal)
- Federal share (\$2,000,000) divided by Total Project Cost (\$2,775,000) = 72.1% (federal)

B. Other Eligibility Information

Refer to [NOFO Part 1, Eligibility—Eligible Applicants](#) for NOFO-specific eligibility information. The information below is standard for DOE NOFOs.

1. Questions Regarding Eligibility

DOE will not make eligibility determinations for potential applicants prior to the date on which applications to the NOFO Part 1 must be submitted. The decision to apply in response to the NOFO Part 1 lies solely with the applicant.

2. Entity of Concern Prohibition

Prohibition

DOE is prohibited by law from funding any grant, contract, cooperative agreement, or loan of \$10 million or more in DOE funds to Entities of Concern. In addition, such entities (including an individual that owns or controls, is owned or controlled by, or is under common ownership or control with an Entity of Concern) are prohibited from receiving any funds or performing work under any award involving Department activities authorized under Division A or B of Public Law 117-167, subject to

certain penalties. See section 10114 of Public Law 117-167 (42 USC 18912) and section 310 of Public Law 118-42 and other applicable law for additional information.

By submitting an application to this NOFO, the applicant is certifying that neither the applicant nor any of the project participants qualify as Entities of Concern.

Definitions

Entity of Concern is defined as in section 10114 of Public Law 117-167 (42 USC 18912), also known as the CHIPS and Science Act, as any entity, including a national, that is—

(A) identified under section 1237(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (50 U.S.C. 1701 note; Public Law 105–261);

(B) identified under section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (10 U.S.C. 113 note; Public Law 116– 283);

(C) on the Entity List maintained by the Bureau of Industry and Security of the Department of Commerce and set forth in Supplement No. 4 to part 744 of title 15, Code of Federal Regulations;

(D) included in the list required by section 9(b)(3) of the Uyghur Human Rights Policy Act of 2020 (Public Law 116–145; 134 Stat. 656); or

(E) identified by the Secretary, in coordination with the Director of the Office of Intelligence and Counterintelligence and the applicable office that would provide, or is providing, covered support, as posing an unmanageable threat—

(i) to the national security of the United States; or

(ii) of theft or loss of United States intellectual property.

3. Artificial Intelligence (AI) Application Use

Any use of artificial intelligence in the creation of any part of an application for this NOFO must be appropriately attributed. Even with the use of artificial intelligence, each applicant is responsible for and is representing to the U.S. Government that the information in its application documents is accurate, that the applicant is fully capable of performing the work described in the application, and that the submission of the application does not and will not infringe or violate any rights of any third party or entity.

III. Program Description

Refer to [NOFO Part 1, Program Description](#) for all information related to the specific NOFO goals, objectives, and topic areas, if any.

A. Informational Webinar

Refer to the [NOFO Part 1, Basic Information—Key Dates](#) to determine if DOE plans to conduct an informational webinar while the NOFO is open.

If applicable, DOE will conduct an informational webinar during the NOFO process. It will be held after the initial NOFO release but before the due date for concept papers or the application if concept papers are not required.

Attendance is not mandatory and will not positively or negatively impact the overall review of any applicant submissions. The webinar will be open to all potential applicants who wish to participate. Applicants should refrain from asking questions or communicating information that would reveal confidential and/or proprietary information specific to their project.

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IV. Application Content and Form

This section contains supplemental information to help applicants understand the application content and form requirements outlined in the NOFO including detailed information on the content and naming conventions of the application content. Please refer to the [NOFO Part 1, Application Content and Form](#) section for the application contents and form specific to your application.

Note that some of the required application elements below have separate requirements for Research and Development (R&D) versus non-R&D NOFOs. Refer to the [NOFO Part 1, Application Content Requirements](#) section for specific instructions.

A. Application Format Summary

All submissions must conform to the form and content requirements described below. Refer to the [NOFO Part 1, Application Content and Form](#) for the page limits.

| Format Requirements | |
|---------------------|--|
| Parameter | Requirement |
| File Format | Portable Document Format (PDF) unless stated otherwise |
| Language | English |
| Paper Size | 8.5" x 11" |
| Margins | Not less than 1" (≥ 1 ") on every side |
| Font | 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 | 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. |
| Control Number | A control number will be issued when an applicant begins the 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., <i>Control Number_Applicant Name_Application</i>). |
| Page Numbers | Page numbers must be included in the footer of every page. 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. |

| | |
|------------------------|--|
| Page Count Limitations | If applicants exceed the maximum page limitations, DOE will review only the authorized number of pages and disregard any additional pages. |
|------------------------|--|

The following information is intended to address eXCHANGE issues typically encountered during the application process. Refer to [NOFO Part 1, Submission Requirements and Deadlines—Application Package](#) for the eXCHANGE site location and support for technical assistance information.

| Additional eXCHANGE Information | |
|---------------------------------|---|
| Deadlines for Submission | eXCHANGE is designed to enforce the deadlines specified in this NOFO. The “Apply” and “Submit” buttons will automatically disable at the defined submission deadlines. |
| Submission Difficulties | Applicants who experience technical difficulties with submission PRIOR to the NOFO deadline should contact the eXCHANGE helpdesk for assistance using the information provided above. |
| Application Forms | To access application forms and instructions available on eXCHANGE, select the appropriate funding opportunity number on the Funding Opportunity page. |
| Size Limitations | <p>The maximum file size that can be uploaded to the eXCHANGE website is 50MB. Files larger than 50MB cannot be uploaded and hence cannot be submitted for review. If a file is larger than 50MB but is still within the maximum page limit specified in the NOFO, it must be broken into parts and denoted to that effect. For example: "TechnicalVolume_Part_1", "TechnicalVolume_Part_2".</p> <p>DOE will not accept late submissions that resulted from technical difficulties due to uploading files that exceed 50MB.</p> |

B. Application Content Requirements

The [NOFO Part 1, Application Content Requirements](#) identifies which of the following application documents are required including the program-specific requirements such as the technical volume and specified page limits. Each application must be limited to a single concept and must not exceed the stated page limits. DOE reserves the right to not proceed with merit reviews for incomplete applications.

1. Application for Federal Assistance (SF-424)

Applicants must complete the SF-424: Application for Federal Assistance, which is available on [Financial Assistance Forms and Information For Applicants and Recipients | Department of Energy](#). The list of certifications and assurances can also be found on the site noted above. Complete all required fields in accordance with the instructions on the form.

Please ensure that the dates (Block 17) and dollar amounts (Block 18) on the SF-424 are for the complete project period and not just the first project year, first phase, or another subset of the project period.

2. Letters of Commitment

Submit letters of commitment from all subrecipients. In addition, submit letters of commitment from all 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. Letters of support or endorsement for the project from entities that do not have a substantive role in the project will not be accepted. The following information for each third party contributing to cost sharing should be identified:

| Letters of Commitment Content | |
|---------------------------------------|--|
| Organization Name | Phone, email, and address |
| Proposed Dollar Amount to be Provided | Value of the contribution |
| Cost Sharing Type | Cash or In-Kind contribution (or both) |

Each letter must not exceed one page and must be signed by an authorized representative of the third-party entity.

3. Impacted Indian Tribes Documentation

For any application that potentially impacts Indian Tribes or is on Tribal land¹ including when the potentially impacted Indian Tribe is the applicant, applicants are required to submit additional documentation at the time of application, and possibly during negotiation and prior to award. For any project that potentially impacts Indian Tribes, applicants are required to submit documentation demonstrating that an authorized representative of each potentially impacted Indian Tribe is, at a minimum, aware of the nature of the application and its potential impacts to the relevant Indian Tribes. The notified authorized representative² must be holding their position while the award is open for applications, and documentation must demonstrate affirmative awareness of the application (e.g. a delivery record from certified mail, a reply by the authorized representative).

For any project intended to be sited on Tribal land(s) or intersecting with Tribal subsurface rights, applicants are required to submit documentation demonstrating support from the relevant Indian Tribes at the time of application. Documentation of support submitted at the time of application will also be considered.

¹ Tribal land is as defined in 25 U.S.C. §§ 3501(2), (3), (4)(A) and (13).

² An authorized representative must be an elected official or designated leader according to the traditions, constitution, or charter of the Indian Tribe, or someone with relevant delegated authority within the Tribal government. Examples include: Chief, Chairman, Chairwoman, Governor, Nation Representative, President, Chief Executive Officer, Chief Financial Officer, Speaker of the Council, Speaker of the Congress, Tribal administrator.

| Helpful Resources | |
|--|---|
| Item | Criteria |
| Letter of Support from Tribal Leadership | The letter must be signed by an authorized representative of the Indian Tribe. The signer(s) must be holding their position while the award is open for applications or negotiations. |
| Tribal Council Resolution, Board resolution (including the Board of Directors of an Alaska Native Corporation (ANC)), or similar act passed by the legislative body of the Tribal government or Board of Directors of an ANC | Must express support for the project. |

Applicants are encouraged to reference or include any applicable community benefits agreements in the Tribal support documentation, and to integrate any Tribal support documentation in the community benefits plan as appropriate, For projects not intended to be sited on Tribal land(s) or intersecting with Tribal subsurface rights, but that may have other potential impacts on Tribal resources or reserved rights, letters of support or resolutions of support are strongly encouraged and, depending on the nature of the impact, may be required if selected for negotiation of an agreement. Applicants are encouraged to reach out to Indian Tribes as early as possible in the application process to give Indian Tribes ample time to evaluate and respond.

The following resources may be useful to help determine if a project may impact an Indian Tribe(s) resources or reserved rights and the appropriate contacts. These resources are not exhaustive, and many Indian Tribes have resources or reserved rights which extend beyond their Tribal lands, or are covered within treaties, statutes, or case-law. Applicants are encouraged to do additional research:

| Helpful Resources | |
|---|---|
| Item | Location |
| Map of Indian Lands | https://bia-geospatial-internal.geoplatform.gov/indianlands/ |
| Tribal Treaties Database | https://treaties.okstate.edu/ |
| Directory of federally recognized Tribes and Tribal leaders | https://www.bia.gov/service/tribal-leaders-directory |
| Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and other similar rights | https://www.bia.gov/sites/default/files/dup/inline-files/best_practices_guide.pdf |

| | |
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| in federal regulatory actions | |
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To help determine if an Indian Tribe’s resources or reserved rights may be impacted by the project, applicants must address the following elements, as applicable to the application. If the applicant is an Indian Tribe, these elements should be addressed to ascertain impacts to Indian Tribes other than the applicant. Applicants do not need to reveal specific details about sacred sites such as specific location or specific ceremonies:

| Indian Tribe Resource or Reserved Rights Impact Assessment | | |
|--|---|---|
| Type of Action | Assessment | Mitigation |
| If Research and Development (R&D) | Identify any [specific resources] which will be [quantified/modeled] on or near Tribal land, traditional homelands, Tribal historic sites, sacred sites, or in areas where an Indian Tribe maintains rights to [specific resources]. Identify which Indian Tribe(s) may be impacted? Explain any instances of uncertainty or confidentiality.” | Explain any actions taken by the applicant to mitigate or address any potential impacts identified, including engaging with the potentially impacted Indian Tribe(s), in the application. |
| If Demonstration and Deployment (D&D) | Identify any elements of the project that will occur on or near Indian land, Tribal historic sites, or sacred sites and describe its potential impacts to Indian Tribes. Identify the potentially impacted Indian Tribe(s). | |
| Subsurface Resource Activities (carbon sequestration, oil & gas, geothermal, critical minerals, groundwater, etc.) | Identify any Tribal mineral rights, subsurface, or water rights at or near the proposed project location. Explain any relevant studies already performed, such as groundwater studies? Identify which Indian Tribe(s) might be impacted. Explain any instances of uncertainty and any potential for subsurface resource migration which has been considered. | |
| If Hydropower, Offshore Wind, or other Water Related Projects | Identify any Tribal resources or reserved rights (e.g., water, fishing, or other treaty rights) which could be impacted by the proposed project. Identify any Tribal historic sites, sacred sites, or relevant vistas, which could be impacted by the project. Identify the potentially impacted Indian Tribe(s) and explain any sources of uncertainty or confidentiality. | |
| If Infrastructure (e.g., Transmission and Pipeline) Projects | Identify any Indian Land (as defined in 25 U.S.C. § 3501), traditional homelands, or Tribal historic and sacred sites which will be crossed, or adjacent to the proposed infrastructure. Identify which Indian Tribe(s) might be | |

| | | |
|--|---|--|
| | impacted and explain any instances of uncertainty or confidentiality. | |
| Other Actions Not Categorized Above | Identify any [other] proposed actions which may impact an Indian Tribe(s) resources or reserved rights. Tribal resources and reserved rights include, and are not limited to, an Indian Reservation or Land (as defined in 25 U.S.C. § 3501) [or intersecting Tribal sub-surface rights], historic homelands from which they were removed, cultural sites, sacred sites, water rights, mineral and other subsurface rights, fishing rights, and hunting rights. Identify the Tribe(s) potentially impacted and any sources of uncertainty or confidentiality. | |

Applicants are required to document any efforts taken to identify any potential impacts to Indian Tribes, Indian lands, Alaska Native regional and village land, traditional homelands, Tribal rights, or Tribal historic sites, or sacred sites. This includes any correspondence with Indian Tribes. These documents should be available on request to DOE. An applicant’s failure to submit documentation of an Indian Tribe’s awareness, or a letter of support, when required as described above, may constitute grounds for determining an application ineligible, non-responsive to the NOFO, not subject to further review, and/or not otherwise subject to selection or award.

Any application that may potentially impact Indian Tribe(s) may be shared with the potentially impacted Indian Tribe(s). Applicants should include a Notice of Restriction on Disclosure and Use of Data identifying any business sensitive, trade secrets, proprietary, or otherwise confidential information.

Such information shall be used or disclosed only for evaluation of the application or to determine whether the proposed project affects an Indian Tribe(s). If an applicant determines an Indian Tribe(s) will be impacted, the applicant must provide information on the project location, potential impacts and how the applicant will engage with Indian Tribe(s), during the period of performance of the agreement, and, if necessary, after the end of the agreement. If the applicant proposes any activities that could impact Tribal resources or reserved rights, including but not limited to lands, cultural sites, sacred sites, water rights, mineral rights, fishing rights, and hunting rights, they must notify DOE as outlined below in the application submission requirements. DOE will determine if formal government-to-government consultation is needed, and DOE will conduct that consultation accordingly, in addition to any engagement by applicant.

4. Statement of Project Objectives (SOPO)

Refer to the **NOFO Part 1, Technical Volume** for specific requirements. If required, applicants must submit a SOPO. The SOPO template is available in eXCHANGE, which is provided for the administrative convenience of the applicant. Applicants are strongly encouraged to use the template to complete their

SOPO. If the template is not used, the SOPO must address all of the elements described in NOFO Part 1, *Technical Volume*, and as outlined in the template.

5. Project Management Plan

Refer to the *NOFO Part 1, Technical Volume* for specific requirements. If required, applicants must submit a PMP. The PMP template is available in eXCHANGE, which is provided for the administrative convenience of the applicant. Applicants are strongly encouraged to use the template to complete their PMP. If the template is not used, the PMP must address all of the elements described in NOFO Part 1, *Technical Volume*, and as outlined in the template.

6. Budget Information-Non-Construction Programs (SF-424A)

If applicants elect to use the budget justification workbook in eXCHANGE, they do not need to submit a separate SF-424A. Applicants must provide a separate budget for each year of support requested and a cumulative budget for the total project period of performance. Use the SF-424A Excel, "Budget Information - Non-Construction Programs" form on the DOE Financial Assistance Forms Page at [Financial Assistance Forms and Information For Applicants and Recipients | Department of Energy](#).

You may request funds under any of the Object Class Categories as long as the item and amount are necessary to perform the proposed work, meet all the criteria for allowability under the applicable federal cost principles, and are not prohibited by the [standard Funding Restrictions](#) described below or any program-specific restrictions in the *NOFO Part 1, Application Content and Form—Funding Restrictions*.

7. Budget Justification Workbook

Please refer to the Budget Justification Workbook template in [eXCHANGE](#). Applicants are strongly encouraged to use the suggested template. If applicants choose not use the suggested template, you must also submit an SF-424A Budget Information form (available on [grants.gov](#)) and include a breakdown of all costs by Budget Category as outlined in the SF-424A and the Budget Justification suggested template, including all work to be performed by the recipient and its subrecipients and contractors. The SF-424A budget justification form must be saved as PDF file using the following convention for the title, "Control Number_LeadOrganization_424A_Budget."

In addition to project-specific costs, applicants should include costs associated with the following activities, as applicable:

- Oversight;
- Required annual audits and incurred cost proposals (such costs may be reimbursed as a direct or indirect cost).
- Implementing award-specific requirements such as Buy America requirements, Davis-Bacon Act requirements, and Community Benefits Plans;
- Reporting;
- Construction signage; and

The “Instructions and Summary” and “SF-424A” tabs included with the Budget Justification Workbook will auto-populate as the applicant enters information into the Workbook. Applicants must carefully read the “Instructions and Summary” tab provided within the Budget Justification Workbook.

8. Subrecipient Budget Justification

Applicants must provide a separate budget justification for each subrecipient that is expected to perform work estimated to be more than \$500,000 or 25% of the total work effort, whichever is less. The budget justification must include the same justification information described in the [Budget Justification Workbook](#) section above.

9. Work Proposal for DOE FFRDC

If a DOE FFRDC is to perform a portion of the work, the applicant must provide a DOE work proposal (WP) in accordance with the requirements in DOE Order 412.1A, Work Authorization System, available at: <https://www.directives.doe.gov/directives-documents/400-series/0412.1-Border-a-chg1-AdmChg>.

10. Authorization for Non-DOE or DOE FFRDCs (if applicable)

If an FFRDC is to perform a portion of the work, the federal agency sponsoring the FFRDC must authorize in writing the use of the FFRDC on the proposed project. This authorization must be submitted with the application. The use of a FFRDC must be consistent with the contractor’s authority under its award.

11. Waiver for Foreign Entity Participation

All recipients receiving funding under the applicable NOFO Part 1 must be incorporated (or otherwise formed) under the laws of a state or territory of the United States and have a physical location for business operations in the United States. To request a waiver of this requirement, an applicant must submit an explicit waiver request in the application.

Waiver Criteria

Foreign entities seeking to participate in a project funded under this NOFO must demonstrate to the satisfaction of DOE that:

1. Its participation is in the best interest of the United States industry and United States economic development;
2. The project team has appropriate measures in place to control sensitive information and protect against unauthorized transfer of scientific and technical information;
3. Adequate protocols exist between the United States subsidiary and its foreign parent organization to comply with export control laws and any obligations to protect proprietary information from the foreign parent organization;

4. The work is conducted within the United States, and the entity acknowledges and demonstrates that it has the intent and ability to comply with the U.S. Competitiveness Provision (see [Post-Award Requirements--U.S. Manufacturing Commitments](#) below); and
5. The foreign entity will satisfy other conditions that DOE may deem necessary to protect U.S. government interests.

Content for Waiver Request

A Foreign Entity waiver request must include all of the following:

1. Information about the entity(ies) involved in the proposed work to be conducted outside the United States (i.e., the entity seeking a waiver and the entity(ies) that will conduct the work): name, point of contact, and proposed type of involvement in the project;
2. Country of incorporation, the extent of the ownership/level control by foreign entities, whether the entity is state owned or controlled, a summary of the ownership breakdown of the foreign entity, and the percentage of ownership/control by foreign entities, foreign shareholders, foreign state, or foreign individuals;
3. The rationale for proposing a foreign entity participate (must address criteria above);
4. A description of the project's anticipated contributions to the United States economy;
 - a. How the project will benefit United States R&D and manufacturing, including contributions to employment in the United States and growth in new markets and jobs in the United States;
 - b. How the project will promote domestic American manufacturing of products and/or services;
5. A description of how the foreign entity's participation is essential to the project;
6. A description of the likelihood of IP being created from the work and the treatment of any such IP; and
7. Countries where the work will be performed. (Note: If any work is proposed to be conducted outside the United States, the applicant must also complete a separate request foreign work waiver.)

DOE may also require:

1. A risk assessment with respect to IP and data protection protocols that includes the export control risk based on the data protection protocols, the technology being developed, and the foreign entity and country. These submissions could be prepared by the project lead (if not the recipient), but the recipient must make a representation to DOE as to whether it believes the data protection protocols are adequate and make a representation of the risk assessment – high, medium, or low risk of data leakage to a foreign entity.
2. Additional language be added to any agreement or subagreement to protect IP, mitigate risk, or other related purposes.

DOE may require additional information before considering the waiver request. DOE's decision concerning a waiver request is not appealable.

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

All work for the projects selected must be performed in the United States. To request a waiver of this requirement, the applicant must submit an explicit waiver request in the application. A separate waiver

request must be submitted for each entity proposing performance of work outside of the United States.

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

1. The rationale for performing the work outside the United States (“foreign work”);
2. A description of the work proposed to be performed outside the United States;
3. An explanation as to how the foreign work is essential to the project;
4. A description of the anticipated benefits to be realized by the proposed foreign work and the anticipated contributions to the U.S. economy;
5. The associated benefits to be realized and the contribution to the project from the foreign work;
6. How the foreign work will benefit the United States, including manufacturing, contributions to employment in the United States and growth in new markets and jobs in the United States;
7. How the foreign work will promote manufacturing of products and/or services in the United States;
8. A description of the likelihood of IP being created from the foreign work and the treatment of any such IP;
9. The total estimated cost (DOE and recipient cost share) of the proposed foreign work;
10. The countries in which the foreign work is proposed to be performed; and
11. The name of the entity that would perform the foreign work.

DOE may require additional information before considering the waiver request. DOE’s decision concerning a waiver request is not appealable.

13. Community Benefits Plan: Job Quality and Equity (non-R&D)

The information below is **sample** non-R&D CBP content. Please refer to the CBP template in [eXCHANGE](#) for specific CBP requirements.

The Community Benefits Plan: Job Quality and Equity (Community Benefits Plan or Plan) must set forth the applicant’s approach to ensuring that federal investments advance four goals: 1) community and labor engagement; 2) investing in quality jobs; 3) advancing DEIA; and 4) contributing to the Justice40 Initiative. The Community Benefits Plan should indicate the applicant’s intention to engage meaningfully with labor and community stakeholders on these goals, including the potential of entering into formal Workforce and Community Agreements. Given project complexity and sensitivities, applicants should consider pursuing multiple agreements.

All CBP related activities or policies, including internal policies related to labor unions and DEIA, must be attributed to the entity performing the project and have a direct nexus to the success of the specific project, including actions to de-risk projects, for example, to build long-term Tribal or community support, or secure a stable workforce. If applicant describes an activity or policy covering any of the stated objectives attributed to the parent-level organization, for example, then the applicant must show how the applicant organization is implementing the policy or activity at the project level.

Applicants are strongly encouraged to use the template and sample commitments to complete their specific Plan. If the template is not used, the Plan must address all of the elements described below, and

as outlined in the template. For the purposes of formulating the CBP budget justification, any overlapping or duplicative activities described in the CBP need only be accounted for in the budget once.

The applicant's Community Benefits Plan should include at least one Specific, Measurable, Achievable, Relevant, and Timely (SMART) milestone per section per budget period to measure progress on the proposed actions. The Plan will be evaluated as part of the technical review process. If DOE selects a project, the selectee may be responsible for developing a Community Benefits Outcomes and Objectives (CBOO) document. DOE will incorporate the CBOO and other community benefits terms and conditions into the award and the recipient must implement its CBOO and community benefits terms and conditions when carrying out its project. Public transparency around the plan and SMART commitments ensure accountability. As such, DOE plans to make the content of each CBOO available publicly. In addition, DOE will evaluate the recipient's progress during the award period of performance, including as part of the continuation and/or Go/No-Go review process.

This Plan must address the technical review criterion titled "Community Benefits Plan: Job Quality & Equity." See the [NOFO Part 1, Application Review Information—Review Criteria](#) section.

For additional information, see [About Community Benefits Plans](#).

The Community Benefits Plan must address the following four components:

1. Community and Labor Engagement:

The Community Benefits Plan must describe the applicant's actions to date and plans to engage with community partners, such as state and local governments, Indian Tribes, labor unions, and community-based organizations that support or work with underserved populations, as well as disadvantaged communities as defined for purposes of the Justice40 Initiative³. By facilitating community input, social buy-in, and accountability, such engagement has the potential to substantially reduce or eliminate delays, litigation, and other risks associated with project implementation.

Although Tribal governments are included in this section on community and labor stakeholders, American Indian and Alaska Native Tribal Nations have rights as sovereign governments recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Applicants are required to make Indian Tribes aware of potential impacts and obtain letters of support when projects are on Tribal land or intersect with Tribal subsurface rights, as required in the [Impacted Indian Tribes Documentation](#) section above.

Community and labor engagement should lay the groundwork for the negotiation of Workforce and Community Agreements, which could take the form of one or more kinds of negotiated agreements with Indian Tribes, communities, and labor unions. Registered apprenticeship programs, labor-

³ Pursuant to [EO 14008](#), "Tackling the Climate Crisis at Home and Abroad," January 27, 2021, and the Office of Management and Budget's [Interim Justice40 Implementation Guidance M-21-28](#) and [Addendum M-23-09](#), DOE recognizes disadvantaged communities as the census tracts identified as disadvantaged by the White House Council on Environmental Quality's Climate and Economic Justice Screening Tool (CEJST), located at <https://screeningtool.geoplatform.gov/>, as well as all Federally Recognized Tribes (whether or not they have land). See https://www.whitehouse.gov/wp-content/uploads/2023/01/M-23-09_Signed_CEQ_CPO.pdf. DOE's Justice40 Implementation Guidance is located at <https://www.energy.gov/media/277188>

management training partnerships, quality pre-apprenticeship programs, and local and targeted hiring goals are key components of workforce agreements. Community agreements can include economic benefits for Tribes and local and disadvantaged communities as well as provisions such as a community-governed fund and environmental, wealth-building, energy democracy, resilience, or other benefits for local communities, workers, and/or Tribes.

Applicants should also provide Community and Labor Partnership Documentation from representative organizations reflecting substantive engagement and feedback on the applicant's approach to community benefits, including quality jobs; diversity, equity, inclusion, and accessibility; and the Justice40 Initiative detailed below.

2. Investing in Quality Jobs:

A well-qualified, skilled, and trained workforce is necessary to ensure project stability, continuity, and success, and to meet program goals. High-quality jobs are critical to attracting and retaining the qualified workforce required.

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

The National Labor Relations Act guarantees employees right to organize and bargain collectively through labor organizations of their choosing, thereby creating a workplace more amenable to resolving disputes before work disruptions occur. This helps assure project efficiency, continuity, and multiple public benefits. Project funds may not be used to influence worker organizing or collective bargaining.

The Plan should include:

- A. A summary of the applicant's plan to attract, train, and retain a skilled and well-qualified workforce for planning, construction, *and* ongoing operations/production activities, as applicable. A collective bargaining agreement, labor-management partnership, or other similar agreement could provide evidence of such a plan. Alternatively, applicants may describe:
 - Wages, benefits, and other worker supports to be provided, benchmarked against prevailing wages for construction and upper quartile wages for other relevant occupations and industries.
 - Commitments to invest in workforce education and training, including measures to reduce attrition, increase productivity from a committed and engaged workforce, and support the development of a resilient, skilled, and stable workforce for the project; and
 - Efforts to establish robust workplace safety and health plans that engage production and hourly employees in design and execution.
- B. It is the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association. Applicant should provide a description of how they plan to affirmatively support worker organizing and collective bargaining. For example, this may include a commitment to negotiate pre-hire project labor agreements for construction activity, a pledge to make public a commitment to remain neutral during any union organizing campaigns, a pledge to

make public the intention or willingness to permit union recognition through card check (as opposed to requiring union elections), intention or willingness to enter into binding arbitration to settle first contracts, a pledge to make public a commitment to allow union organizers access to appropriate onsite non-work places (e.g., lunch rooms), a pledge to make public a commitment to refrain from holding captive audience meetings, and other supportive commitments or pledges.

3. Diversity, Equity, Inclusion, and Accessibility (DEIA):

The Community Benefits Plan must include a section describing how DEIA objectives will be incorporated into the project. The section should detail how the applicant will partner and contract with underrepresented⁴ businesses, residents of disadvantaged communities, educational institutions, and training organizations that serve workers who face barriers to accessing quality jobs, and/or other project partners to help address DEIA.

The following is a list of potential DEIA actions that could be included in a Plan. This list is offered to provide guidance to applicants and is not intended to be comprehensive:

- A. For construction projects, using hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice 40 Initiative, or high-unemployment census tracts within a region no smaller than the county where the construction project is located;
- B. Using hiring preferences or goals for individuals with barriers to employment⁵ including women and people from underserved communities as defined by Executive Order 14091;
- C. Using geographic hiring preferences or goals for members of local communities and Indian Tribes;
- D. Using agreements intended to ensure uninterrupted delivery of services; using agreements to ensure community benefits;
- E. Partnering or contracting with Minority Serving Institutions⁶ or businesses majority owned or controlled by residents of disadvantaged communities, underrepresented persons or groups of underrepresented persons;
- F. To fill open positions for the DOE-funded project, partner with workforce training organizations serving underrepresented populations and those facing systemic barriers to quality employment, such as those with disabilities, women, returning citizens, opportunity youth, and veterans;
- G. Provide workers and trainees with comprehensive support services, such as childcare and transportation, to increase representation and access to training opportunities and to the project's construction and operations jobs.

4. Justice40 Initiative:

Applicants must provide an overview of benefits to disadvantaged communities that the project can

⁴ "Underrepresented" refers to populations sharing a particular characteristic, as well as geographic communities, that are shown to have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by communities that have been denied fair, just, and impartial treatment, which may include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons;

⁵ Individuals with barriers to employment are defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24)).

⁶ Minority-Serving Institution is defined in [7 CFR § 3430.302](#).

deliver, supported by measurable milestones. The Justice40 Initiative section should include:

- A. Identification of applicable disadvantaged communities to which the anticipated project benefits will flow, by making clear whether Federally Recognized Tribes or Tribal entities will benefit or if benefits will flow to disadvantaged communities as identified by the Climate and Economic Justice Screening Tool (<https://screeningtool.geoplatform.gov/>).
- B. Identification of applicable benefits that are quantifiable, measurable, and trackable, including, at a minimum, a discussion of the relevance of each of the eight DOE Justice40 Initiative benefits outlined below. Benefits include (but are not limited to) measurable direct or indirect investments or positive project outcomes that achieve or contribute to the following in disadvantaged communities: (1) a decrease in energy burden; (2) a decrease in environmental exposure and burdens; (3) an increase in access to low-cost capital; (4) an increase in quality job creation, the clean energy job pipeline, and job training for individuals; (5) increases in clean energy enterprise creation and contracting; (6) increases in energy democracy, including community ownership; (7) increased parity in clean energy technology access and adoption; and (8) an increase in energy resilience. Applicants should also discuss how the project will maximize all the benefits listed in number 4 above.
- C. A description of the mechanism and timing of anticipated benefits are expected to flow to disadvantaged communities. For example, whether the benefits will be provided directly within the disadvantaged communities identified in the Justice40 Initiative section or in another way; whether the benefits will flow during project development and/or after project completion; and how the applicant will track benefits delivered.
- D. A discussion of anticipated negative environmental, social or economic impacts as described in B. above on local and disadvantaged communities including communities geographically near the project or directly affected by project construction or operations, as well as known impacts upstream (in the supply chain, e.g., raw material extraction) or downstream (e.g., waste disposal). Applicants should discuss any anticipated negative or positive environmental impacts associated with the project, and how they will mitigate any negative impacts, including cumulative negative impact. Within the context of negative or positive impacts created by the project, applicants should use the Climate and Economic Justice Screening Tool (CEJST) to quantitatively discuss existing environmental impacts in the project area. See <https://screeningtool.geoplatform.gov/>.

For projects funded under the applicable NOFO Part 1, DOE will provide specific reporting guidance for the community benefits described above.

14. Community Benefits Plan for Research & Development (R&D) Projects

Refer to the *NOFO Part 1, Application Content and Form—Application Content Requirements* table for specific requirements.

The information below is **sample** content for the R&D Community Benefits Plan (CBP). Please refer to the CBP template in [eXCHANGE](#) for specific CBP requirements.

The R&D Community Benefits Plan must set forth the applicant's approach to ensuring the federal investments advance the following three objectives: (1) advancing DEIA; (2) contributing to the Justice40 Initiative and other considerations linked with energy and/or environmental justice; and (3) investing in quality jobs. Applicants must address all three sections. CBP related activities must be attributable to the

project and contribute to project success. In addition to advancing policy objectives, CBPs de-risk projects, for example, through actions that build long-term Tribal or community support, secure a stable workforce or ensure supplier diversity. If the applicant describes an activity or policy covering any of the stated objectives attributed to the parent-level organization, for example, then the applicant must show how the applicant organization is implementing the policy or activity at the project level.

Applicants are strongly encouraged to use the template to complete their specific Plan. If the template is not used, the Plan must address all of the elements described below, and as outlined in the template. For the purposes of formulating the CBP budget justification, any overlapping or duplicative activities described in the CBP need only be accounted for in the budget once.

The applicant's R&D Community Benefits Plan should include at least one Specific, Measurable, Achievable, Relevant, and Timely (SMART) milestone per budget period to measure progress on the proposed actions.

The R&D Community Benefits Plan will be evaluated as part of the technical review process. If a project is selected, the selectee may be responsible for developing a Community Benefits Outcomes and Objectives (CBOO) document. Community benefits commitments are included in the terms of the federal award via the CBOO, as terms and conditions or otherwise into the award as part of the go/no-go determination, and/or as elements in other award documentation. The recipient must implement the community benefits commitments within the CBOO and/or other community benefits elements in the award documentation when carrying out its project. Public transparency around the plan and SMART commitments ensure accountability. As such, DOE plans to make the content of each CBOO available publicly. DOE will evaluate the recipient's progress throughout the life of the award, including as part of the Go/No-Go or continuation review process.

The plan must be specific to the proposed project and not a restatement of an organization's policies. Applicants must describe the future implications or a milestone-based plan for identifying future implications of their research on energy and/or environmental justice, including, but not limited to, benefits for the U.S. workforce. These impacts may be uncertain, occur over a long period of time, and/or have many factors within and outside the specific proposed research. Applicants are encouraged to describe the influencing factors and the most likely workforce and community implications of the proposed research if the research is successful, as well as energy and/or environmental justice implications.

This Plan must address the CBP R&D technical review criterion in the [NOFO Part 1, Application Review Information—Technical Review Criteria](#).

The R&D Community Benefits Plan typically addresses the following three sections:

1. Diversity, Equity, Inclusion, and Accessibility:

To building a clean and equitable energy economy, it is important that there are opportunities for people of all racial, ethnic, socioeconomic, and geographic backgrounds, sexual orientation, gender identity, persons with disabilities, and those re-entering the workforce from incarceration. This section of the plan must demonstrate how DEIA is incorporated in the technical project objectives. The plan must identify the specific action the applicant would take that integrates into the research goals and project teams. Submitting an institutional DEIA plan without specific integration into the project will be deemed insufficient.

2. The Justice 40 Initiative and other considerations linked with energy and/or environmental justice:

This section should include information on how the project will advance the Justice40 Initiative's goal⁷. In addition, this section must articulate the applicant's consideration of long-term equity implications of the research and any implications for environmental justice. It must identify how the specific project integrates equity and environmental justice considerations into the project design to support equitable outcomes for affected communities if the innovation is successful. Like cost reductions and commercialization plans, the R&D Community Benefits Plan requires description of the implications of the innovation for local affected communities.

3. Quality Jobs:

This section must articulate the applicant's consideration of long-term workforce impacts and opportunities of the research. It must identify how the project is designed and executed to include an understanding of the future workforce needs if the innovation is successful.

See the Community Benefits Plan Template and <https://www.energy.gov/bil/community-benefits-plan-frequently-asked-questions-faqs> About Community Benefits Plans | Department of Energy for more guidance.

15. Community Partnership Documentation

In support of the Community Benefits Plan, applicants are encouraged to submit documentation to demonstrate existing or planned partnerships with community entities, such as organizations that work with local stakeholders most vulnerable to or affected by the project. Examples of such entities include organizations that carry out workforce development programs, labor unions, Indian Tribes, Tribal organizations, and community-based organizations that work with disadvantaged communities. The partnership documentation can be a letter on a partner's letterhead outlining the planned partnership and signed by an officer of the entity, a Memorandum of Understanding, or another similar agreement. Such letters must state the specific nature of the partnership and must not be general letters of support. If the applicant intends to enter into Workforce and Community Agreements as part of the Community Benefits Plan, they should include letters from proposed partners. Each letter must not exceed one page. In total, the partnership documentation must not exceed 10 pages.

16. Resumes for Research and Development (R&D) NOFOs

A resume provides information reviewers can use to evaluate an individual's skills, experience, and potential for leadership within the scientific community. Applicants must submit a resume or biographical sketch (see description below the table) for each Principal Investigator or Lead Project Manager, Senior/Key Personnel, and all covered individuals as defined in the *NOFO Part 1, Application Content and Form—Application Content Requirements, Covered Individual Definition, Designation and Responsibility*.

⁷ The Justice40 Initiative, established by [EO 14008](#), sets a goal that 40% of the overall benefits of certain federal investments flow to disadvantaged communities. Consistent with Justice40 guidance, DOE recognizes disadvantaged communities as the census tracts defined and identified as disadvantaged by the White House Council on Environmental Quality's Climate and Economic Justice Screening Tool (CEJST), located at <https://screeningtool.geoplatform.gov/>, as well as all Federally Recognized Tribes (whether or not they have land). See https://www.whitehouse.gov/wp-content/uploads/2023/01/M-23-09_Signed_CEQ_CPO.pdf.

DOE reserves the right to not proceed with merit reviews for incomplete applications. Applicants must screen resumes to ensure that they do not contain PII such as personal addresses, personal landline/cell phone numbers, and personal emails.

Resumes must include the following information, at a minimum:

| Resume Requirements (Research & Development Activities) | |
|---|--|
| Contact Information | Phone, email, and address |
| Education & Training | Provide name of institution, major/area, degree, and year for undergraduate, graduate, and postdoctoral training |
| Research & Professional Experience | Beginning with the current position, list professional/academic positions in chronological order with a brief description. List all current academic, professional, or institutional appointments, foreign or domestic, at the applicant institution or elsewhere, whether remuneration is received, and, whether full-time, part-time, or voluntary |
| Awards & Honors | List any notable awards and honors received |
| Publications | List of up to 10 publications most closely related to the proposed project. For each publication, identify the names of all authors (in the same sequence in which they appear in the publication), the article title, book or journal title, volume number, page numbers, year of publication, and website address if available electronically. Patents, copyrights, and software systems developed may be provided in addition to or substituted for publications. An abbreviated style such as the Physical Review Letters (PRL) convention for citations (list only the first author) may be used for publications with more than 10 authors |
| Synergistic Activities | List up to five professional and scholarly activities related to the proposed effort; |
| Additional Criteria | There should be no lapses in time over the past 10 years or since age 18, whichever period is shorter. |

As an alternative to a resume, it is acceptable to use the biographical sketch format approved by the National Science Foundation (NSF). The biographical sketch format may be generated by the Science Experts Network Curriculum Vita (SciENCv), a cooperative venture maintained at [SciENCv: Science Experts Network Curriculum Vitae \(nih.gov\)](http://SciENCv: Science Experts Network Curriculum Vitae (nih.gov)) also available at [Common Form for Biographical Sketch \(nsf.gov\)](http://Common Form for Biographical Sketch (nsf.gov)). 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.

17. Resumes for Non-Research & Development (R&D) NOFOs

A resume provides information reviewers can use to evaluate an individual’s relevant skills and the experience of the key project personnel. Applicants must submit a resume for each project manager, Senior/Key Personnel, and all covered individuals as defined in the *NOFO Part 1, Application Content and Form—Application Content Requirements, Covered Individual Definition, Designation and Responsibility*.

Applicants must screen resumes to ensure that they do not contain PII such as personal addresses, personal landline/cell phone numbers, and personal emails.

Resumes must include the following at a minimum:

| Resume Requirements | |
|--------------------------------|---|
| Contact Information | Phone, email, and address |
| Education | All academic institutions attended, major/area, degree |
| Training | Examples include certification or credential from a Registered Apprenticeship or Labor Management Partnership |
| Professional Experience | Beginning with the current position, list professional/academic positions in chronological order with a brief description |
| Current Appointments | All current academic, professional, or institutional appointments, foreign or domestic, at the applicant institution or elsewhere, whether or not remuneration is received, and whether full-time, part-time, or voluntary. |
| Additional Criteria | There should be no lapses in time over the past 10 years or since age 18, whichever period is shorter. |

18. 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 application, the Principal Investigator or Lead Project Manager and all covered individuals as defined in the *NOFO Part 1, Application Content Requirements--Covered Individual Definition, Designation, and Responsibility* 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 [malign foreign talent recruitment programs](#) must be identified in current and pending support.

| Information Required for Each Activity | |
|--|--|
| Sponsor of the Activity | The sponsor of the activity or the source of funding. |
| Award Number | The federal award number or any other identifying number. |
| Award Title | 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 |

| | |
|---|---|
| Total Cost or Value | 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 |
| Award Period | The "Start Date" through "End Date". |
| Person-months | The person-months of effort per year dedicated to the award or activity |
| Description | To identify overlap, duplication of effort, or synergistic efforts, append a description of the other award or activity to the current and pending support. |
| Digital Persistent Identifier (e.g., ORCID ID) | For R&D NOFOs only, provide an ORCID ID (optional until May 2025, and required thereafter). |
| Certification Statement | <p>Covered individuals must provide a separate certification statement listing the required information above regarding current and pending support. Each individual must sign and date their respective certification statement:</p> <p><i>I, [Full Name and Title], understand that I have been designated as a covered individual by the Federal funding agency.</i></p> <p><i>I 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.</i></p> <p><i>I also certify that, at the time of submission, I am not a party in a maligan foreign talent recruitment program.</i></p> <p>The following CPS certification is optional until May 1, 2025, and mandatory thereafter:</p> <p><i>I further certify that within the past 12 months I have completed one of the following: (1) research security training meeting the guidelines in SEC. 10634(b) of 42 USC 19234, or (2) all of the NSF training modules located https://new.nsf.gov/research-security/training.</i></p> |

| | |
|---------------------------------------|--|
| Foreign Government Sponsorship | 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. |
|---------------------------------------|--|

The information may be provided in the approved common disclosure format available at [Common Form for Current and Pending \(Other\) Support \(nsf.gov\)](https://www.nsf.gov). Regardless of the format used, the individual must include a signature, date, and a certification statement using the language included in the table above.

Current and Pending Support Disclosures must be submitted for all covered individuals, include the exact certification statement provided above, and must be signed and dated in order to be considered. DOE reserves the right to not proceed with application merit reviews for incomplete applications.

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.

Malign Foreign Talent Recruitment Program as defined in P.L. 117-167, Section 10638(4):

- A) any program, position, or activity that includes compensation in the form of cash, in-kind compensation, including research funding, promised future compensation, complimentary foreign travel, things of non de minimis value, honorific titles, career advancement opportunities, or other types of remuneration or consideration directly provided by a foreign country at any level (national, provincial, or local) or their designee, or an entity based in, funded by, or affiliated with a foreign country, whether or not directly sponsored by the foreign country, to the targeted individual, whether directly or indirectly stated in the arrangement, contract, or other documentation at issue, in exchange for the individual—

- i. engaging in the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information owned by a United States entity or developed with a federal research and development award to the government of a foreign country or an entity based in, funded by, or affiliated with a foreign country regardless of whether that government or entity provided support for the development of the intellectual property, materials, or data products;
- ii. being required to recruit trainees or researchers to enroll in such program, position, or activity;
- iii. establishing a laboratory or company, accepting a faculty position, or undertaking any other employment or appointment in a foreign country or with an entity based in, funded by, or affiliated with a foreign country if such activities are in violation of the standard terms and conditions of a federal research and development award;
- iv. being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;
- v. through funding or effort related to the foreign talent recruitment program, being limited in the capacity to carry out a research and development award or required to engage in work that would result in substantial overlap or duplication with a federal research and development award;
- vi. being required to apply for and successfully receive funding from the sponsoring foreign government's funding agencies with the sponsoring foreign organization as the recipient;
- vii. being required to omit acknowledgment of the recipient institution with which the individual is affiliated, or the federal research agency sponsoring the research and development award, contrary to the institutional policies or standard terms and conditions of the federal research and development award;
- viii. being required to not disclose to the federal research agency or employing institution the participation of such individual in such program, position, or activity; or
- ix. having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of the federal research and development award; and

(B) a program that is sponsored by—

- i. a foreign country of concern or an entity based in a foreign country of concern, whether or not directly sponsored by the foreign country of concern;
- ii. an academic institution on the list developed under section 1286(c)(8) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; 1 Public Law 115–232); or
- iii. a foreign talent recruitment program on the list developed under section 1286(c)(9) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; 1 Public Law 115–232).

More information can be found at [OSTP-Foreign-Talent-Recruitment-Program-Guidelines.pdf](#) ([whitehouse.gov](#)).

19. Digital Persistent Identifier (PID)

For all Research and Development (R&D) NOFOs, individuals that are required to submit Biographical Sketch and/or Current and Pending (Other) Support disclosures must provide a digital persistent identifier (PID) in such disclosures as part of the application. Included PIDs must meet the common/core

standards specified in the [NSPM-33 Implementation Guidance](#) or successor guidance (e.g., an [ORCID iD](#)). The inclusion of an individual’s PID will be optional until May 1, 2025, and mandatory thereafter.

Include this information for each covered individual with the [Current and Pending Support](#) submission as described above and in the [NOFO Part 1, Application Content Requirements--Covered Individual Definition, Designation, and Responsibility](#) section.

20. Research Security Training Requirement

The research security training requirement described here is optional until May 1, 2025, and mandatory thereafter for R&D awards. Covered individuals listed on applications under the NOFO Part 1 are required to certify that they have taken research security training consistent with Section 10634 of the CHIPS and Science Act of 2022. In addition, applicants who receive an award must maintain sufficient records (records must be retained for the time period noted in [2 CFR 200.334](#) and made available to DOE upon request) of their compliance with this requirement for covered individuals at the applicant/recipient organization and they must extend this requirement to any and all subrecipients. To fulfill this requirement, an applicant may utilize the four one-hour training modules developed by the National Science Foundation at <https://new.nsf.gov/research-security/training> or develop and implement their own research security training program aligned with the requirements in Section 10634(b) of the CHIPS and Science Act of 2022. The submission of an application to this NOFO constitutes the applicant’s acceptance of this requirement.

Include this information for each covered individual with the [Current and Pending Support](#) submission as described above and in the [NOFO Part 1, Application Content Requirements--Covered Individual Definition, Designation, and Responsibility](#).

21. Transparency of Foreign Connections

Applicants must provide the following information as it relates to the proposed recipient and subrecipient(s). Include a separate disclosure for the applicant and each proposed subrecipient.

Disclosure exceptions by entity type:

- U.S. National Laboratories and domestic government entities are not required to respond to the Transparency of Foreign Connections disclosure.
- Institutions of higher education are only required to respond to items with an asterisk symbol (*).

Applicants, regardless of entity type, must provide complete responses for project team members that are not U.S. National Laboratories, domestic government entities, or institutions of higher education.

| Disclosure Information | |
|------------------------|--|
| *Entity Name | Complete legal name of the lead organization. |
| *Website Address | Link to the entity's website address. |
| *Mailing Address | Complete mailing address for the entity to include zip code. |

| Disclosure Information | |
|---|--|
| *Project Participants Party to ANY Malign Foreign Talent Recruitment Program | The identity of all owners, principal investigators, project managers, and covered individuals who are a party to any Malign Foreign Talent Recruitment Program . As part of this requirement, the entity must also certify that each covered individual has been made aware of the Malign Foreign Talent Recruitment Program prohibition and complied with the certification requirement via the Current and Pending Support disclosure; |
| Country of Risk Joint Venture or Subsidiary | The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk (i.e., the People’s Republic of China, Iran, North Korea, and Russia); |
| Current or Pending Foreign Contractual or Financial Obligation | Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity; |
| Percentage Foreign Ownership or Control | Percentage, if any, that the proposed recipient or subrecipient has foreign ownership or control; |
| Percentage Country of Risk Ownership | Percentage, if any, that the proposed recipient or subrecipient is wholly or partially owned, directly or indirectly, by an entity incorporated or otherwise formed in a foreign country of risk or foreign state-owned entity; |
| Percentage Country of Risk Investment | Percentage, if any, of venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk; |
| *Country of Risk Technology Licensing of Intellectual Property Sales | Any technology licensing, transfer, or intellectual property sales to a foreign country of risk, in effect during the 5-year period preceding submission of the proposal within the same technology area as the application (e.g., batteries, biotechnology, grid, energy generation and storage, advanced computing); |
| *Foreign Equipment | Any of the following foreign equipment proposed for use on the project: <ul style="list-style-type: none"> i. Unmanned aircraft, control, and communications components originally made or manufactured in a foreign country of risk (including relabeled or rebranded equipment). ii. Coded equipment where the source code is written in a foreign country of risk. iii. Equipment from a foreign country of risk that will be connected to the internet or other remote communication system. iv. Any entity from a foreign country of risk that will have physical or remote access to any part of the equipment used on the project after delivery. |
| Foreign Entity Relationships | Any foreign business entity, offshore entity, or entity outside the United States related to the proposed recipient or subrecipient; |
| List of Company Directors (and Board Observers) | Complete list of all directors (and board observers), including their full name, citizenship and shareholder affiliation, date of appointment, duration of term, as well as a description of observer rights as applicable; |

| Disclosure Information | |
|---|---|
| Complete Capitalization Table | Complete capitalization table for your entity, including all equity interests (including LLC and partnership interests, as well as derivative securities). Include both the number of shares issued to each equity holder, as well as the percentage of that series and all equity on a fully diluted basis. Identify the principal place of incorporation (or organization) for each equity holder. If the equity holder is a natural person, identify the citizenship(s). If the recipient or subrecipient is a publicly traded company, provide the above information for shareholders with an interest greater than 5%; |
| Principal Place of Incorporation | Identify the principal place of incorporation (or organization) for each equity holder. If the equity holder is a natural person, identify the citizenship(s). If the recipient or subrecipient is a publicly traded company, provide the above information for shareholders with an interest greater than 5%; |
| Rounds of Financing Table | A summary table identifying all rounds of financing, the purchase dates, the investors for each round, and all the associated governance and information rights obtained by investors during each round of financing; and |
| Organization Chart | An organization chart to illustrate the relationship between your entity and the immediate parent, ultimate parent, and any intermediate parent, as well as any subsidiary or affiliates. Identify where each entity is incorporated. |

DOE reserves the right to request additional or clarifying information based on the information submitted.

22. Potentially Duplicative Funding Notice

If the applicant or project team member has other active awards of federal funds, the applicant must determine whether the activities of those awards potentially overlap with the activities set forth in its application to this NOFO. If there is a potential overlap, the applicant must notify DOE in writing of the potential overlap and state how it will ensure any project funds (i.e., recipient cost share and federal funds) will not be used for identical cost items under multiple awards.

Likewise, for projects that receive funding under this NOFO, if a recipient or project team member receives any other award of federal funds for activities that potentially overlap with the activities funded under the DOE award, the recipient must promptly notify DOE in writing of the potential overlap and state whether project funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under the DOE award. If there are identical cost items, the recipient must promptly notify the DOE Grants Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

23. Data Management Plan

A Data Management Plan (DMP) is required for all Research and Development projects. Please refer to the **NOFO Part 1, Application Content Requirements—Application Content Requirements** section to determine if a DMP is required.

If required, the DMP must provide a plan for making all research data displayed in publications resulting from the proposed work digitally accessible at the time of publications. A DMP explains how, when appropriate, data generated in the course of the work performed under a DOE award will be shared and preserved to validate the results of the proposed work or how the results could be validated if the data is not shared or preserved.

An applicant may select one of the template Data Management Plans (DMPs) listed below.

| DMP Options | | |
|---------------|------------------------------|---|
| Option Number | Category | DMP Template Language |
| 1 | Protected Data Permitted | For the deliverables under the award, the recipient does not plan on making the underlying research data supporting the findings in the deliverables publicly available for up to five (5) years after the data were first produced because such data will be considered protected under the award. The results from the DOE deliverables can be validated by DOE who will have access, upon request, to the research data. Other than providing deliverables as specified in the award, the recipient does not intend to publish the results from the project. However, in an instance where a publication includes results of the project, the underlying research data will be made available according to the policies of the publishing media. Where no such policy exists, the recipient must indicate on the publication a means for requesting and digitally obtaining the underlying research data. This includes the research data necessary to validate any results, conclusions, charts, figures, images in the publications. |
| 2 | Protected Data NOT Permitted | For any publication that includes results of the project, the underlying research data will be made available according to the policies of the publishing media. Where no such policy exists, the recipient must indicate on the publication a means for requesting and digitally obtaining the underlying research data. This includes the research data necessary to validate any results, conclusions, charts, figures, images in the publications. |

Alternatively, instead of selecting one of the template DMPs, an applicant may submit another DMP provided that the DMP, at a minimum,

- 1) describes how data sharing and preservation will enable validation of the results from the proposed work, how the results could be validated if data are not shared or preserved and
- 2) has a plan for making all research data, if applicable, displayed in publications resulting from the proposed work digitally accessible at the time of publications.

The DOE Public Access Plan located at https://www.energy.gov/sites/prod/files/2014/08/f18/DOE_Public_Access%20Plan_FINAL.pdf provides additional guidance.

The DMP submitted with the application must be consistent with the planned intellectual property (IP) approach for the award.

If selected for negotiation of an award, the IP provisions included in the award will govern rights provided to the Government regarding IP such as the Government-purpose license, march-in rights, and certain U.S. manufacturing requirements that may be implemented.

24. Locations of Work

If Locations of Work is required in NOFO Part 1, the applicant must provide a list of locations where project work will be performed by the recipient or subrecipient(s), including the information identified in the Locations of Work (LOW) template for each location. For your convenience, a Locations of Work template is available on eXCHANGE (please refer to the *NOFO Part 1, Application Content and Form—Application Content Requirements* table for the file format and name instructions). Applicants are strongly encouraged to use the template. If the template is not used, the submission must include all the elements described below, and as outlined in the template.

- Location Type
- Location Type Category
- Is this a Principal Place of Performance?
- Prime or Subrecipient Location?
- If Subrecipient, Subrecipient/Community Name
- Facility Name (if applicable)
- Is location in a foreign country?
- Street Address, City, State, 5-Digit Zip Code - +4
- Briefly describe the primary activity at this location or with this population. For example, management headquarters; construction, operations, production; raw materials extraction, etc.
- Latitude/Longitude
- Does the location of work qualify as a disadvantaged community according to the according to the Climate and Economic Justice Screening Tool (CEJST)?
- Does the location or community that will receive benefits qualify as a disadvantaged community according to the CEJST?
- Will a Federally Recognized Tribe or Tribal entity receive benefits?
- Is the location of work sited on Tribal land or does it intersect with Tribal subsurface rights?
- If a geographically defined disadvantaged community, add the census tract number or describe the distributed (dispersed) disadvantaged community served (e.g., migrant workers)
- % of work performed at this location

25. 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. See also [Lobbying](#) in the Funding Restrictions section below.

a. All recipients and subrecipients that have lobbying activities to disclose:

Complete and submit the Disclosure of Lobbying Activities (SF-LLL) available at: https://apply07.grants.gov/apply/forms/sample/SFLLL_2_0-V2.0.pdf 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.

b. Recipients and subrecipients that have no lobbying activities to disclose:

Complete and submit, Certification Regarding Lobbying form (OMB 4040-0013) available at: https://apply07.grants.gov/apply/forms/sample/GG_LobbyingForm-V1.1.pdf

26. Summary for Public Release

Applicants must submit a one-page summary of their project that is suitable for dissemination to the public.

| Summary of Public Release Content | |
|---|---|
| Applicant Name | Provide the legal name of the applicant. |
| Major Participant Names | List all significant project participants and their roles. |
| Lead Project Manager / Principal Investigator(s) | Provide names and titles. |
| Project Title | Provide the title for the planned project. |
| Project Location(s) | Provide the location(s) of work for the proposed project. |
| Project Objectives | Identify the overarching project objectives aligned with requirements set forth in the NOFO. |
| Project Description | The description must include methods to be employed, the potential impact of the project (e.g., benefits, outcomes), and the project’s commitments and goals described in the Community Benefits Plan |
| Publicly Releasable (Unlimited Rights) | This document must not include any proprietary or business-sensitive information, as DOE may make it available to the public after selections are made. |

| | |
|---------------------------------|---|
| Page Limit Clarification | The summary must not exceed the stated page limit when printed, using standard 8.5" x 11" paper with 1" margins (top, bottom, left, and right) with font not smaller than 12-point. |
|---------------------------------|---|

27. Summary Slide

Applicants must provide a single slide summarizing the proposed project. The Summary Slide requirements and instructions are reflected in the NOFO Part 1 (Section X), and the suggested Summary Slide template is available on eXCHANGE. Typically, the Summary Slide includes information such as:

| Summary Slide Content | |
|---|--|
| Project Title | Provide the title for the planned project. |
| Applicant | Provide the legal name of the applicant. |
| Project Location(s) | Provide the location(s) of work for the proposed project. |
| PI/LPM and Key Personnel Information | Provide names and titles. |
| Requested DOE Funds | Identify federal funds requested for the project. |
| Proposed Cost Share | Provide the amount of cost share contribution. |
| Technology Summary | Describe the technology to be developed. |
| Technology Impact | Describe the impact of the proposed technology if the project is successful. |
| Project Goals | Identify the overarching project goals. |
| Key Graphics | Illustrations, charts and/or tables |
| Key Idea / Takeaway | Describe the key takeaway that you would like to provide to the DOE. |
| Topline Community Benefits | Describe the key community benefits to be derived from the project. |

C. Additional Requirements

1. Content and Form of Replies to Reviewer Comments

Refer to *NOFO Part 1, Application Content and Form—Summary* to determine if the reply to reviewer comments submission phase applies. If so, the following information applies:

DOE will provide applicants with reviewer comments following the evaluation of all eligible applications. Applicants have a brief opportunity to prepare a short Reply to Reviewer Comments (Reply). The Reply must not exceed three pages. If a Reply is more than three pages in length, DOE will review only the first three pages and disregard additional pages. Applicants may use the Reply to respond to one or more comments or to supplement their application. The Reply may include text, graphs, charts, or data.

DOE will post the reviewer comments in eXCHANGE. The expected submission deadline is on the cover page of the NOFO Part 1; however, it is the applicant's responsibility to monitor eXCHANGE if 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 eXCHANGE or relying on the expected date alone. Applicants should anticipate having approximately three (3) business days to prepare and submit a Reply.

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

D. Funding Restrictions

1. 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.

2. Pre-Award Costs

Applicants selected for award negotiations (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 Grants 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.

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

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

DOE does not guarantee or assume any obligation to reimburse pre-award costs incurred prior to receiving written authorization from the Grants 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 Grants Officer, the applicant is doing so at risk of not receiving federal funding for its 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 Grants Officer overrides the requirement to obtain the written authorization from the Grants 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 recipient elects to undertake activities that are not authorized for federal funding by the Grants Officer in advance of DOE completing a NEPA review, the recipient is doing so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.

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

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

Failure to Comply

If the 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 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 recipient, subrecipients, contractors or other project partners.

Foreign Work Waiver

To seek a foreign work waiver, the applicant must submit a written waiver request to DOE. Refer to [Performance of Work in the United States \(Foreign Work Waiver\)](#) which lists the information that must be included in a request for a foreign work waiver.

4. Foreign Travel

Please refer to *NOFO Part 1, Application Content and Form—Funding Restrictions* to see if foreign travel costs are allowable or not.

If allowable per NOFO Part 1, and if international travel is required to complete tasks for your project:

- Your organization must submit a foreign work waiver. See *Performance of Work in the United States (Foreign Work Waiver)* above for details.
- Your organization must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between, or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a United States flag carrier, if service is available.
- **Foreign travel costs are allowable only with the written approval of the Grants Officer assigned to the award prior to any incurred costs.**

5. 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) 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.

6. Equipment and Supplies

All equipment and products purchased with funds made available under this NOFO should be American-made, to the greatest extent practicable. This requirement does not apply to used or leased equipment. This requirement does not supersede any other statutory requirement in the NOFO (e.g., [Buy America Requirements for Infrastructure Projects](#)).

7. Davis-Bacon Act Requirements

Refer to *NOFO Part 1, Application Content and Form—Funding Restrictions* to determine if the Davis-Bacon Act requirements are applicable (if “Davis-Bacon Act Requirements” is not listed in the *Applicable Funding Restrictions* table, it is not required).

For projects awarded under NOFOs that will be funded under Division D of BIL, 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 the applicable NOFO Part 1 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, 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 NOFO 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 the Davis-Bacon Act requirements, including but not limited to:

- Ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subrecipient or contract awards;
- Ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from subrecipient or contract awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance;
- Being responsible for compliance by any subrecipient or contractor with the Davis-Bacon labor standards;
- Receiving and reviewing certified weekly payrolls submitted by all subrecipients or contractors for accuracy and to identify potential compliance issues;
- Maintaining original certified weekly payrolls for three years after the completion of the project and making those payrolls available to DOE or the U.S. Department of Labor (DOL) upon request, as required by 29 CFR 5.6(a)(2);
- 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 subrecipients or contractors and as requested or directed by DOE;
- Cooperating with any authorized representative of DOL in its inspection of records, interviews with employees, and other actions undertaken as part of a DOL investigation;
- 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;
- Notifying the Grants Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from 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 award, subrecipient award, contract or subcontract; and
- Preparing and submitting to the Grants 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 will also be required to undergo Davis-Bacon Act compliance training and maintain competency in Davis-Bacon Act compliance. The Grants Officer will notify the recipient of any DOE-sponsored Davis-Bacon Act compliance trainings. 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>.

Recipients must ensure the timely submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act.

DOE has contracted with [LCPtracker](#), a third-party DBA electronic payroll compliance software application, and recipients use of LCPtracker is mandatory absent a grant of a waiver. A waiver for the use of LCPtracker may be granted to a particular recipient if they are unable or limited in their ability to use or access the system. 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 recipient 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 recipient 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 recipients to electronically sign payroll reports versus using a wet signature. Individual program offices will coordinate with recipients on access and training.

For more information, visit [Davis-Bacon Act Requirements for Recipients of Bipartisan Infrastructure Law Funding](#).

8. Construction Signage

If your project involves construction, recipients are encouraged to display DOE Investing in America signage during and after construction. Guidance can be found at: (<https://www.energy.gov/design>).

Proposed construction signage costs that meet these specifications are an allowable cost and should be included in the proposed project budget.

V. Submission Requirements and Deadlines

Please refer to the [NOFO Part 1, Application Content and Form—Application Content Requirements](#) for all submission requirements and instructions including the content and form for each submission and deadlines.

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VI. Application Review Information

Please refer to the [NOFO Part 1, Application Review Information—Review Criteria](#) for specific compliance and technical criteria. The following describes the DOE evaluation and selection process that is applicable to all NOFOs.

A. Standard Evaluation and Selection Processes

1. 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 NOFO. Ultimately, the Selection Official considers the recommendations of the reviewers, along with other considerations such as program policy factors and risk reviews, in determining which applications to select.

2. 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 described below. The invited applicant(s) will meet with DOE representatives to provide clarification on the contents of the 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.

3. 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 described above. 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.

4. Recipient Responsibility and Qualifications

Prior to making a federal award with a total amount of federal share greater than the simplified acquisition threshold, DOE is required to review and consider any responsibility and qualification information about the applicant that is in the entity information domain in [SAM.gov](https://sam.gov) (see 41 U.S.C. § 2313).

The applicant, at its option, may review information in the entity information domain in [SAM.gov](https://sam.gov) and comment on any information about itself that a federal awarding agency previously entered and is currently in the entity information domain in [SAM.gov](https://sam.gov).

DOE will consider any written comments by the applicant, in addition to the other information in the entity information domain in [SAM.gov](https://sam.gov), 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.

5. Due Diligence Review for Research, Technology and Economic Security

All applications submitted to DOE are subject to a due diligence review.

As DOE invests in critical infrastructure and funds critical and emerging technology areas,⁸ DOE considers possible threats to United States research, technology, and economic security from undue foreign government influence when evaluating risk. If high risks are identified and cannot be sufficiently mitigated, DOE may elect to not fund the applicant. As part of the research, technology, and economic security risk review, DOE may contact the applicant and/or proposed project team members for additional information to inform the review. This risk review is conducted separately from the technical merit review.

The due diligence review of covered individuals includes but is not limited to the review of resumes and disclosures, as required in the NOFO. DOE reserves the right to ask for disclosures on project participants not defined as covered individuals. The Applicant need not submit any additional information on non-covered individuals, unless requested by DOE. The volume and type of information collected may depend on various factors associated with the award.

Note this review is separate and distinct from DOE Order 142.3B "Unclassified Foreign National Access Program".

⁸ See [Critical and Emerging Technologies List Update \(whitehouse.gov\)](https://www.whitehouse.gov).

6. 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.

7. Selection

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

VII. Selection and Award Notices

DOE anticipates notifying applicants selected for negotiation of award and negotiating awards by the dates provided on the [NOFO Part 1, Basic Information—Key Dates](#).

A. Selection Notices

1. Ineligible Submissions

Ineligible concept papers, if required, and applications will not be further reviewed or considered for award. The Grants Officer will send a notification letter by email to the technical and administrative points of contact designated by the applicant in eXCHANGE. The notification letter will state the basis upon which the concept paper or the application is ineligible and not considered for further review.

2. Concept Paper Notifications

Please refer to the [NOFO Part 1, Application Content and Form](#) section to determine if Concept Papers are required.

If Concept Papers are required, DOE will notify applicants of its determination to encourage or discourage the submission of an application. DOE will post these notifications to eXCHANGE. DOE may include general comments provided from reviewers on an applicant's concept paper in the encourage/discourage notifications.

Applicants may submit an application even if they receive a notification discouraging them from doing so. By discouraging the submission of an 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 an application that is unlikely to be selected for award negotiations.

A notification encouraging the submission of an application does not authorize the applicant to commence performance of the project.

3. 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 eXCHANGE. The notification letter will inform the applicant whether its application was selected for award negotiations. Alternatively, DOE may notify one or more applicants that a final selection determination on particular applications will be made at a later date, subject to the availability of funds or other factors.

4. Applicants Selected for Award Negotiations

DOE may stagger its selection determinations. As a result, some applicants may receive their notification letter in advance of other applicants. Successful applicants will receive written notification that they have been selected for award negotiations including estimated award negotiation dates. Receipt of a notification letter selecting an 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 nor is it a guarantee of federal government funding. Applicants

do not receive an award until award negotiations are complete and the Grants Officer executes the funding agreement, accessible by the recipient in FedConnect.

The award negotiation process can take a minimum of 60 days up to 180 days depending on the complexity of the project and responsiveness of the selectee among other factors. Applicants must designate a primary and a backup point-of-contact in eXCHANGE with whom DOE will communicate to conduct award negotiations.

The applicant must be responsive during award negotiations by providing requested documentation, including post-selection 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 the [Pre-Award Costs](#) section above for guidance on pre-award costs.

5. Alternate Selections

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 application for federal funding in the future. A notification letter stating the 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 application for award negotiations.

6. Applicants Not Selected for Award Negotiations

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

B. Post-Selection Information Requests

To reduce burden in the application process required under [Memorandum M-24-11 Reducing Burden in the Administration of Federal Financial Assistance](#), DOE has instituted Post-Selection Information Requests and Submissions procedures. These procedures allow certain elements of an application to be submitted later in the application process, either prior to merit review or after merit review when the application is under consideration for funding.

Applicants will be notified (primarily by e-mail) when Post-Selection Information is needed. This notification is not a Notice of Award, nor should it be construed to be an indicator of possible funding. Applicants should only submit this information when requested. The applicant will be notified on what documents and materials to submit, the format required and where and when to submit.

1. Example Information Requests

The following is a list of examples of information that may be required to complete award negotiations:

- Personnel proposed to work on the project and collaborating organizations
- Participants and Collaborating Organizations;
- Current and Pending Support;
- Community Benefits Outcomes and Objectives;
- Other budget information;

- Indirect cost information;
- Letters of Commitment from third parties contributing to cost share, if applicable;
- Name and phone number of the Designated Responsible Employee for complying with national policies prohibiting discrimination (See 10 CFR 1040.5);
- Information for the DOE Office of Civil Rights to process assurance reviews under 10 CFR 1040;
- Environmental Questionnaire;
- Lobbying disclosure;
- Representation of Limited Rights Data and Restricted Software, if applicable;
- Cybersecurity Plan (specific to certain BIL-funded projects)
- For construction projects: information related to Davis-Bacon Act requirements; 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; any proposed or required Project Labor Agreements; Collective Bargaining Agreements; Construction Workforce Continuity Plan; Operations Workforce Continuity Plan; and

2. Entity Risk Assessment

Pursuant to 2 CFR 200.206, DOE may conduct an additional review of the risk posed by applications submitted under the applicable NOFO Part 1. This risk assessment may consider:

- Financial stability;
- Quality of management systems and ability to meet the management standards prescribed in 2 CFR Part 200 as adopted and supplemented by 2 CFR Part 910;
- History of performance;
- Audit reports and findings; and
- The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on recipients or subrecipients.

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 recipients or subrecipients 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.

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

DOE’s decision whether and how to distribute federal funds under this NOFO 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 applicants selected for award negotiations and recipients of 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 documents must be prepared to complete the NEPA review process, the recipient may be required to prepare the documents and the costs to prepare the necessary documents may be included as part of the project costs. DOE will independently evaluate the environmental document and will take responsibility for the contents, including ensuring the professional integrity of the discussion and analysis, as required by NEPA.

National Historic Preservation Act (NHPA)

DOE must comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) prior to deciding whether or how to distribute federal funds. Section 106 requires DOE to identify and consider adverse effects to historic properties that are listed in or eligible for listing in the National Register of Historic Places. DOE may perform a NHPA review under the umbrella of its NEPA review and will require applicants to assist in this review and consider impacts to historic, Tribal, and cultural resources.

4. Flood Resilience

Executive Order 11988, Floodplain Management, requires agencies engage in a decision-making process to evaluate the potential effects of any action it may take in a floodplain and to avoid development in a floodplain to the extent possible. DOE procedures for implementing the Executive Order are in 10 CFR part 1022. Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (reinstated by EO 14030, Climate-Related Financial Risk), directs federal agencies 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% annual flood change (500-year floodplain). Selectees will be required to indicate whether the proposed project location(s) is within a floodplain, how the floodplain was defined, and how the project’s design has been modified to reduce the risk of flood loss and minimize the impact of floods on human safety, health, and welfare. Information to assist in the implementation of these requirements is available at:

- <https://www.energy.gov/nepa/articles/eo-13690-establishing-federal-flood-risk-management-standard-and-process-further>
- <https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group>
- <http://floodstandard.climate.gov>

5. Trafficking in Persons

Awards under this NOFO will be subject to the requirements at [2 CFR Part 175, Award Term for Trafficking in Persons](#), including the compliance plan and certification requirements applicable if the estimated value of services required to be performed under the grant or cooperative agreement outside the United States exceeds \$500,000.

6. Construction Workforce Continuity Plan

Required for awards inclusive of any construction project with total construction costs greater than \$35M and where DOE is contributing 10 percent or more of the project amount, or as otherwise selected by DOE.

If selected for award negotiations, within 30 days of the notification of selection for award negotiations, the selectee must submit a Construction Workforce Continuity Plan. A Workforce Continuity Plan template is provided at <https://www.energy.gov/infrastructure/reporting-checklists> with the intent to reduce the administrative burden by promoting the use of common formats.

Selectees that have a qualifying Project Labor Agreement (PLA) or have a qualifying Collective-Bargaining Agreement that will cover the construction work as described in the Special Terms and Conditions of the award are not required to submit a Workforce Continuity Plan or the associated Workforce Continuity report on a quarterly frequency post-award.

7. Operations Workforce Continuity Plan

Required for awards inclusive of any project that will have more than 100 employees in operation, including contract workers who are not W2 employees, and where DOE is contributing 10 percent or more of the project amount, or as otherwise selected by DOE.

If selected for award negotiations, within 30 days of the notification of selection for award negotiations, the selectee must submit an Operations Workforce Continuity Plan. A Workforce Continuity Plan template is provided at <https://www.energy.gov/infrastructure/reporting-checklists> with the intent to reduce the administrative burden by promoting the use of common formats.

Selectees that have a qualifying Collective-Bargaining Agreement that will cover operations activities under this award are not required to submit a separate Operations Workforce Continuity Plan or the associated Workforce Continuity report on a quarterly frequency post-award.

C. Award Notices

Upon successful completion of award negotiations, the DOE Grants Officer will approve the award, and the recipient will then receive notification of award and can access it in the FedConnect system. Selectees must be registered in FedConnect to receive the final award package after successful completion of award negotiations.

Registering with [FedConnect](#)[®] is fast, easy, and free. Only individuals who are designated as Points of Contact in SAM.gov can create a new company account.

- **What is it?** It's how recipient receive their legally executed award package.
- The SAM Unique Entity Identifier Number (UEI) must be obtained before this registration can be initiated.
- Review the FedConnect Ready, Set, Go! Guide at https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf
- **Duration** to complete: can take two to three days.
- **Registration Link:** FedConnect website: <https://www.fedconnect.net/FedConnect/Default.htm>
- **HELP:** <https://www.fedconnect.net/FedConnect/TechSupport.aspx>

Electronic Authorization of Applications and Award Documents

Submission of an application and supplemental information under the NOFO Part 1 through electronic systems used by the DOE, including EERE eXCHANGE and FedConnect, constitutes the authorized representative's approval and electronic signature.

VIII. Award Administration Information

A. Post-Award Requirements and Administration

Note: Please review this document prior to applying.

DOE requires all award recipients to follow and accept requirements governed by laws and policies – both federal government-wide and DOE or program specific. These post-award requirements include: all National and Administrative Policy Requirements; financial assistance general Certifications and Representations; Build America, Buy America requirements; Davis-Bacon Act requirements; Risk-Based Review of Project Participants; Performance of Work in the United States (Foreign Work Waiver); Bipartisan Infrastructure Law-Specific Requirements; Fraud, Waste and Abuse requirements; Safety, Security, and Regulatory requirements; and Environmental Review in Accordance with National Environmental Policy Act requirements.

Recipients of an award made under DOE NOFOs must comply with requirements of all applicable federal, state, and local laws, regulations, DOE policy and guidance, instructions in this NOFO, and the award terms and conditions. Recipients must require subrecipients' compliance with all applicable requirements. Reporting requirements are identified on the Federal Assistance Reporting Checklist, attached to the award agreement.

All DOE award recipients must adhere to the following:

1. Award Administrative Requirements

The administrative requirements for DOE grants and cooperative agreements are contained in 2 CFR Part 200 as adopted and supplemented by 2 CFR Part 910.

2. 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. Recipients must register with the FFATA Subaward Reporting System database and report the required data on their first tier subrecipients. Recipients must report the executive compensation for their own executives as part of their registration profile in SAM.

3. 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>.

4. Applicant Representations and Certifications

Lobbying Restrictions

By accepting funds under this award, the 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.

Corporate Felony Conviction and Federal Tax Liability Representations

In submitting an application to a NOFO, 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, a corporation is any for-profit or nonprofit 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].

Nondisclosure and Confidentiality Agreements Representations

In submitting an application to a NOFO 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:

“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.”

- (1) 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.
- (2) 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 U.S. government, may contain provisions appropriate to the 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 during such activity unless specifically authorized to do so by the U.S. 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 U.S. Department of Justice, that are essential to reporting a substantial violation of law.

5. Statement of Federal Stewardship

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

6. 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 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 \$10,000 purchased with project funds. These financing statement(s) must be approved in writing by the Grants 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 Grants 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 Grants Officer may direct.

7. Interim Conflict of Interest Policy for Financial Assistance

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy)⁹ is applicable to all recipients or subrecipients applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant or cooperative 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. Further, for DOE funded projects, the

⁹ DOE's interim COI Policy can be found at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>.

recipient must include all financial conflicts of interest (FCOI) (i.e., managed and unmanaged/unmanageable) in its initial and ongoing FCOI reports.

It is understood that recipients or subrecipients receiving DOE financial assistance awards will need sufficient time to come into full compliance with DOE's interim COI Policy. To provide some flexibility, DOE allows for a staggered implementation. Specifically, prior to award, applicants selected for award negotiations must: ensure all Investigators complete their significant financial disclosures; review the disclosures; determine whether a FCOI exists; develop and implement a management plan for FCOIs; and provide DOE with an initial FCOI report that includes all 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.

8. Whistleblower Protections

As provided in 2 CFR 200.217, an employee of a recipient or subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections.

9. 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:

An Applicant, Recipient, or Subrecipient of a federal award must promptly disclose whenever, in connection with the federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729–3733). The disclosure must be made in writing to the federal agency, the agency's Office of Inspector General, and pass-through entity (if applicable). Recipients and subrecipients are also required to report matters related to recipient integrity and performance in accordance with Appendix XII of this part. 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/recipients 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.

10. 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.

11. Current and Pending Support

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 covered individuals, and 2) updated disclosures if there are changes to the current and pending support previously submitted to DOE. Also see the [Current and Pending Support](#) information in the Application Contents Requirements section above.

12. Prohibition Related to Malign Foreign Talent Recruitment Programs

Prohibition

As required by law,¹⁰ *Covered Individuals* participating in a *Malign Foreign Talent Recruitment Program* are prohibited from participating in projects selected for federal funding under this NOFO. Should an award result from this NOFO, the recipient must exercise ongoing due diligence to reasonably ensure that no such individuals participating on the DOE-funded project are participating in a *Malign Foreign Talent Recruitment Program*. 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 malign foreign talent recruitment program. DOE may modify and add requirements related to this prohibition to the extent required by law.

Covered Individuals and the applicant must provide certifications regarding no participation in *Malign Foreign Talent Recruitment Programs* (see the Current and Pending Support section and Transparency of Foreign Connections section).

Non-Discrimination

DOE will ensure that the Malign Foreign Talent Recruitment Program Prohibition is carried out in a manner that does not target, stigmatize, or discriminate against individuals on the basis of race, ethnicity, or national origin, consistent with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d

¹⁰ See sections 10631-10632 of [P.L. 117-167 \(42 USC 19231-19232\)](#); [OSTP-Foreign-Talent-Recruitment-Program-Guidelines.pdf \(whitehouse.gov\)](#).

et seq.).

Definitions

Malign Foreign Talent Recruitment Program. as defined in P.L. 117-167, Section 10638(4):

- A) any program, position, or activity that includes compensation in the form of cash, in-kind compensation, including research funding, promised future compensation, complimentary foreign travel, things of non de minimis value, honorific titles, career advancement opportunities, or other types of remuneration or consideration directly provided by a foreign country at any level (national, provincial, or local) or their designee, or an entity based in, funded by, or affiliated with a foreign country, whether or not directly sponsored by the foreign country, to the targeted individual, whether directly or indirectly stated in the arrangement, contract, or other documentation at issue, in exchange for the individual—
- i. engaging in the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information owned by a United States entity or developed with a federal research and development award to the government of a foreign country or an entity based in, funded by, or affiliated with a foreign country regardless of whether that government or entity provided support for the development of the intellectual property, materials, or data products;
 - ii. being required to recruit trainees or researchers to enroll in such program, position, or activity;
 - iii. establishing a laboratory or company, accepting a faculty position, or undertaking any other employment or appointment in a foreign country or with an entity based in, funded by, or affiliated with a foreign country if such activities are in violation of the standard terms and conditions of a federal research and development award;
 - iv. being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;
 - v. through funding or effort related to the foreign talent recruitment program, being limited in the capacity to carry out a research and development award or required to engage in work that would result in substantial overlap or duplication with a federal research and development award;
 - vi. being required to apply for and successfully receive funding from the sponsoring foreign government's funding agencies with the sponsoring foreign organization as the recipient;
 - vii. being required to omit acknowledgment of the recipient institution with which the individual is affiliated, or the federal research agency sponsoring the research and development award, contrary to the institutional policies or standard terms and conditions of the federal research and development award;
 - viii. being required to not disclose to the federal research agency or employing institution the participation of such individual in such program, position, or activity; or
 - ix. having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of the federal research and development award; and
- B) a program that is sponsored by—
- i. a foreign country of concern or an entity based in a foreign country of concern, whether or not directly sponsored by the foreign country of concern;
 - ii. an academic institution on the list developed under section 1286(c)(8) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; ¹ Public Law 115–232); or

- iii. a foreign talent recruitment program on the list developed under section 1286(c)(9) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; ¹ Public Law 115–232).

Consistent with applicable law (42 U.S.C. 19232), this provision does not prohibit, unless such activities are funded, organized, or managed by an academic institution or a foreign talent recruitment program on the lists developed under paragraphs (8) and (9) of section 1286(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 4001 note; Public Law 115–232)—

- A) making scholarly presentations and publishing written materials regarding scientific information not otherwise controlled under current law;
- B) participation in international conferences or other international exchanges, research projects or programs that involve open and reciprocal exchange of scientific information, and which are aimed at advancing international scientific understanding and not otherwise controlled under current law;
- C) advising a foreign student enrolled at an institution of higher education or writing a recommendation for such a student, at such student's request; and
- D) other international activities determined appropriate by the federal research agency head or designee.

13. Foreign Collaboration Considerations

For **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, organization, or government regarding the potential collaboration or negotiating the terms of any potential agreement.

For **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 it has entered in connection with its DOE-funded award scope.

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 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.

14. U.S. Manufacturing Commitments

Refer to *NOFO Part 1, Award Administration Information—Post-Award Requirements* to determine if U.S. Manufacturing Commitments are applicable (if “U.S. Manufacturing Commitments” is not listed in the *Applicable Post-Award Requirements and Administration* table, it is not required). If applicable, the following applies:

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/recipient and any subrecipient and contractor 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 applicant/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, subawardee, or subrecipient.

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

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

The U.S. Competitiveness Provision is implemented by DOE pursuant to a Determination of Exceptional Circumstances (DEC) under the Bayh-Dole Act and DOE Patent Waivers. Please refer to the [Title to Subject Inventions](#) section below for more information on the DEC and DOE Patent Waivers.

15. Subject Invention Utilization Reporting

To ensure that recipients, subrecipients, and contractors holding title to subject inventions are taking the appropriate steps to commercialize subject inventions, DOE requires that each recipient, subrecipient, and contractor holding title to a subject invention submit annual reports for 10 years from the date the subject invention was disclosed to DOE on the utilization of the subject invention and efforts made by recipient or its 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 recipient, and such other data and information as DOE may specify.

16. 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>.

17. Go/No-Go Review

Please refer to the *NOFO Part 1, Award Administration Information--Post-Award Requirements* to determine if a Go/No-go review for each DOE-funded project will be applicable (if “Go/No-Go Review” is not listed in the *Applicable Post-Award Requirements and Administration* table, it is not required).

If applicable, each project selected under the applicable NOFO Part 1 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 application¹¹; and (8) written approval of the continuation application by the Grants 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.

¹¹ 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 per the instructions in the award terms and conditions.

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.

18. 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.

19. 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;
- If applicable, proof of compliance with the Davis-Bacon Act 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.

20. Cost Share Payment

DOE requires recipients to contribute the cost share amount incrementally over the life of the award. The terms and conditions of the award will specify the recipient's cost share interval, such as by billing period or on a budget period basis. The recipient's cost share for each interval must always reflect the overall cost share ratio negotiated by the parties (e.g., 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). When FFRDC funding will be provided directly to the FFRDC(s) by DOE, 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 Grants Officer may approve a request by the recipient to meet its cost share requirements on a less frequent basis than required by the terms and conditions of the award. Regardless of the interval requested, the recipient must be up to date on cost share at each interval. Such requests must be sent to the Grants 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 recipient has

complied with its cost share obligations to date. The Grants Officer must approve all such requests before they go into effect.

21. Notice of Bipartisan Infrastructure Law OR Inflation Reduction Act Specific Requirements

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

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

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

States, local governments, and other public entities may not condition subawards in a manner that would discriminate against or otherwise disadvantage subrecipients based on their religious character.

23. Affirmative Action and Pay Transparency Requirements

All recipients must comply with all applicable federal labor and employment laws, including but not limited to Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, the Occupational Safety and Health Act, and the National Labor Relations Act, which protects employees' right to bargain collectively and engage in other concerted activities for the purpose of mutual aid or protection.

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246, as amended—Equal Employment Opportunity:

- Recipients, subrecipients, contractors, and subcontractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 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.
- 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.

DOL's Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule compliance evaluations related to Executive Order 11246, as amended. Consult OFCCP's Technical

Assistance Guide¹² to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors, and subcontractors must take. Additional guidance may also be found in the National Policy Assurances, produced by DOE.

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, as amended, will require participation as a term of the award. This program offers extensive compliance assistance with Executive Order 11246. For more information regarding this program, see <https://www.dol.gov/agencies/ofccp/construction/mega-program>.

24. Construction Signage (if applicable)

For BIL-funded construction projects, recipients are encouraged to display DOE Investing in America signage during and after construction. Guidance can be found at: (<https://www.energy.gov/design>). Proposed signage costs that meet these specifications are an allowable cost and should be included in the proposed project budget.

25. 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 \(SC\) \(osti.gov\)](#).

B. Reporting

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

DOE must measure the performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster the adoption of promising practices. DOE will establish program goals and objectives during negotiations and incorporate it into the award terms. To clearly communicate the specific reporting requirements to meet the program goals and objectives in the federal award, DOE combined all reporting into one document, the Federal Assistance Reporting Checklist. This document, attached to the award agreement, provides any expected outcomes (such as outputs, service performance, or public impacts of any of these), indicators, targets, baseline data, or data collections that the applicant will be responsible for measuring and reporting

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

¹² See OFCCP’s Technical Assistance Guide at: <https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec> Also see the National Policy Assurances <http://www.nsf.gov/awards/managing/rtc.jsp>

- a.** New manufacturing production or recycling capacity
- b.** 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
 - Dollar value of contributions to worker training; number of new employee certificates and training credentials; ratio of apprentice- to journey-level workers employed
 - Number of individuals trained, number of trainees placed in new full-time employment, number of trainings partnering with community-based organizations or labor unions
- c.** Justice and Equity data, including:
 - Underrepresented businesses acting as vendors and subcontractors for bids on supplies, services, and equipment
 - Value, number, and type of partnerships with MSIs
 - Stakeholder engagement events, community engagement process
 - Other relevant indicators from the Community Benefits Plan
- d.** Number and type of energy efficient and clean energy equipment installed
- e.** Funding leveraged, follow-on-funding, intellectual property generation and utilization

Refer to the Federal Assistance Reporting Checklist (DOE F 4600.2), attached to the award package, for award-specific reporting requirements

IX. Other Information

A. Government Right to Reject or Negotiate

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

B. Commitment of Public Funds

The Grants 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 Grants Officer, either express or implied, is invalid.

C. Treatment of Application Information

Applicants should not include trade secrets or business-sensitive, 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 NOFO. Applicants are advised to not include any critically sensitive proprietary detail.

The Freedom of Information Act, 5 U.S.C. 552, requires DOE to release certain federal financial assistance documents and records requested by members of the public regardless of the intended use of the information. DOE will release funded applications and funded progress reports, including award data, as legally releasable at the conclusion of the competitive funding process. However, DOE will generally withhold this information during the pendency of competitive stages of the funding process.

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

Applications and other submissions containing trade secrets or business-sensitive, proprietary, or otherwise confidential information must be marked as described below. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The federal 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 application, and other applicant submission must be marked as follows and identify the specific pages containing trade secrets or business-sensitive, proprietary, or otherwise confidential information:

Notice of Restriction on Disclosure and Use of Data:

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

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

E. Notice Regarding Eligible/Ineligible Activities

Eligible activities under this NOFO include those that 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.

F. 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).

G. 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 cancellation of award negotiations;
- The modification, suspension, and/or cancellation 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.

H. Retention of Submissions

DOE expects to retain copies of all applications and other submissions. By applying to DOE for funding, applicants consent to DOE’s retention of their submissions.

I. Title to Subject Inventions

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

- a. 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.
- b. Domestic Large Businesses: DOE has issued a class patent waiver that applies to this NOFO. Under this class waiver, domestic large businesses may elect title to their subject inventions similar to the right provided to the domestic small businesses, educational institutions, and nonprofits by law. To avail itself of the class waiver, a domestic large business must agree that any products embodying or produced through the use of a subject invention first conceived or first actually reduced to practice under this program will be substantially manufactured in the United States.
- c. 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 patent waiver is granted. Applicants not covered by a Class Patent Waiver or the Bayh-Dole Act 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 terms and conditions. Any patent waiver that may be granted is subject to certain terms and conditions in 10 CFR 784.
- d. 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 subawards, under the applicable NOFO Part 1 shall include the U.S. Competitiveness Provision in accordance with the U.S. Manufacturing Commitments. 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.
- e. DOE may issue and publish further DEC's on the website above prior to the issuance of awards under the applicable NOFO Part 1. DOE may require additional submissions or requirements as authorized by any applicable DEC.

J. Government Rights in Subject Inventions

Where recipients, subrecipients, and contractors retain title to subject inventions, the U.S. government retains certain rights.

Government Use License

The U.S. 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 government contractors.

March-In Rights

The U.S. government retains march-in rights with respect to all subject inventions. Through “march-in rights,” the government may require a 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 recipient, subrecipient, or their assignees and exclusive licensees refuse to do so.

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

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

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

K. Copyright

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

L. 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 investigations, indictments, charges, convictions, and violations upon occurrence, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

M. 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 covered telecommunications equipment or services; extend or renew a contract to procure or obtain covered telecommunications equipment or services; or enter into a contract (or extend or renew a contract) to procure or obtain *covered telecommunications equipment or services*. As described in Section 889 of Public Law 115-232, covered telecommunications equipment or services is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

N. Personally Identifiable Information (PII)

All information provided by the applicant must to the greatest extent possible exclude PII. "PII" refers to information that can be used to distinguish or trace an individual's identity, such as their name, Social Security number, or biometric records, alone or combined with other personal or identifying information linked or linkable to a specific individual, such as date and place of birth or 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).

O. Annual Independent Audits

If a for-profit entity is a recipient and has expended \$1,000,000 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, nonprofit organization, or state/local government is a recipient or subrecipient and has expended \$1,000,000 or more of federal awards during the non-federal entity's fiscal year, 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.

P. Buy America Requirements for Infrastructure Projects; Required Use of American Iron, Steel, Manufactured

Products, and Construction Materials Produced in the United States

A. Definitions

For purposes of the Buy America Requirement, the following definitions apply:

- **Components** -See 2 CFR 184.3 Definitions.
- **Construction Materials** -See 2 CFR 184.3 Definitions.
- **Domestic Content Procurement Preference Requirement** – means a requirement that no amount of funds made available through a program for federal financial assistance may be obligated for an infrastructure project unless—
 - all iron and steel used in the project are produced in the United States;
 - the manufactured products used in the project are produced in the United States; or
 - the construction materials used in the project are produced in the United States.
- Also referred to as the **Buy America Requirement**.
- **Infrastructure** -See 2 CFR 184.4(c) and (d).
- **Infrastructure Project** – See 2 CFR 184.3 Definitions.
- **Manufactured Products** – See 2 CFR 184.3 Definitions
- **Predominantly of iron or steel or a combination of both** -See 2 CFR 184.3 Definitions.
- **Produced in the United States** – See 2 CFR 184.3 Definitions.
- **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 (private) infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned (owned, operated, funded and managed, in whole or in part, by any unit or authority of a Federal, State, or Local government-including U.S. Territories and Indian Tribes); or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose”, and therefore “public”, if it is privately owned but operated on behalf of the public or is a place of public accommodation.
- **Section 70917(c) Materials** – See 2 CFR 184.3 Definitions.

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. See 2 CFR 184.5 for determining the cost of components for manufactured products; and

(3) all construction materials¹³ are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for construction material standards.

The Buy America Requirement only applies to those articles, materials, and supplies that are consumed in, incorporated into, or affixed to the infrastructure in the 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 only applies to an article, material, or supply classified into one of the following categories* based on its status at the time it is brought to the work site for incorporation into an infrastructure project:

- (i) Iron or steel products;
- (ii) Manufactured products; or
- (iii) Construction materials;

The Buy America Requirement only applies to the iron or steel products, manufactured products, and construction materials used for the construction, alteration, maintenance, or repair of public infrastructure in the United States when those items are consumed in, incorporated into, or permanently affixed to the infrastructure. An article, material, or supply incorporated into an infrastructure project should not be considered to fall into multiple categories, but rather must meet the Buy America Preference Requirement for only the single category in which it is classified.

All iron and steel, manufactured products, and construction materials used in the infrastructure project must be produced in the United States.

* *Section 70917(c) Materials* are cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives as provided in section 70917(c) of BABA. Section 70917(c) materials are excluded from Construction materials. Asphalt concrete pavement mixes are typically composed of asphalt cement (a binding agent) and aggregates such as stone, sand, and gravel. Accordingly, asphalt is also excluded from the definition of Construction materials.

Section 70917 (c) materials, on their own, are not manufactured products. Further, Section 70917(c) materials should not be considered manufactured products when they are used at or combined proximate to the work site—such as is the case with wet concrete or hot mix asphalt brought to the work site for incorporation. However, certain Section 70917(c) materials (such as stone, sand, and gravel) may be used to produce a manufactured product, such as is precast concrete. Precast concrete is made of components, is processed into a specific shape or form, and is in such state when brought to the work site. Furthermore, wet concrete should not be considered a manufactured product if not dried or set prior to reaching the work site.

¹³ Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Further clarification is provided in 2 CFR 184 on the circumstances under which a determination is made that Section 70917(c) materials should be treated as components of a manufactured product. That determination is based on consideration of: (i) the revised definition of the “manufactured products” at 2 CFR 184.3; (ii) a new definition of “section 70917(c) materials” at 2 CFR 184.3; (iii) new instructions at 2 CFR 184.4(e) on how and when to categorize articles, materials, and supplies; and (iv) new instructions at 2 CFR 184.4(f) on how to apply the Buy America preference by category.

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 construction 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 an approved waiver or an exemption provided in 2 CFR 184.8, 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 subawardees, 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.

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 (OMB) Made in America Office and are subject to a public comment period of no less than 15 calendar days.

Waiver Requests may be submitted utilizing Optional Form 2211 (OF2211) or any other format to provide the required information below. 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. The waiver request review and public comment process required for a waiver determination can take up to 65 calendar days.

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 award- project objectives, location, and the specific infrastructure project involved;
- Total estimated Financial Assistance award value, inclusive of recipient cost share;
- Total estimated infrastructure costs (estimated costs of the Iron, Steel, Manufactured Products and Construction Materials being purchased under the award and utilized in the infrastructure project);
- 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; A description of the market research conducted that includes who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research; 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, or phased-out over 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 IJJA/BABA and Executive Order 14017.

Q. Acronyms

| Acronym Spelled Out | | Acronym Spelled Out | |
|---------------------|---|---------------------|--|
| ANC | Alaska Native Corporation | NNSA | National Nuclear Security Administration |
| BABA | Build America, Buy America Act | NOFO | Notice of Funding Opportunity |
| BIL | Bipartisan Infrastructure Law | NSF | National Science Foundation |
| CBP | Community Benefits Plan | OFCCP | Office of Federal Contractor Compliance Programs |
| CEJST | Climate and Economic Justice Screening Tool | OIG | Office of Inspector General |
| CEQ | Council on Environmental Quality | OMB | Office of Management and Budget |
| COI | Conflict of Interest | OSHA | Occupational Safety and Health Administration |
| CRADA | Cooperative Research and Development Agreement | OSTI | Office of Scientific and Technical Information |
| DBA | Davis-Bacon Act | OTA | Other Transactions Authority |
| DEC | Determination of Exceptional Circumstances | PII | Personally Identifiable Information |
| DEIA | Diversity, Equity, Inclusion, and Accessibility | PLA | Project Labor Agreement |
| DMP | Data Management Plan | RD&D | Research, Development, and Demonstration |
| DOE | United States Department of Energy | RMP | Risk Management Plan |
| DOI | Digital Object Identifier | RTES | Research, Technology, and Economic Security |

| | | | |
|----------------|--|----------------|--|
| DOL | United States Department of Labor | SAM | System for Award Management |
| EO | Executive Order | SciENCv | Science Experts Network Curriculum Vita |
| FCOI | Financial Conflicts of Interest | SMART | Specific, Measurable, Achievable, Relevant, and Timely |
| FFATA | Federal Funding and Transparency Act of 2006 | SOPO | Statement of Project Objectives |
| FFRDC | Federally Funded Research and Development Center | SPOC | Single Point of Contact |
| IRA | Inflation Reduction Act | STEM | Science, Technology, Engineering, and Mathematics |
| M&O | Management and Operations | TA | Technical Assistance |
| MFA | Multi-Factor Authentication | TRL | Technology Readiness Level |
| MSI | Minority-Serving institution | UCC | Uniform Commercial Code |
| NDA | Non-Disclosure Acknowledgement | UEI | Unique Entity Identifier |
| NEPA | National Environmental Policy Act | WBS | Work Breakdown Structure |
| NHPA | National Historic Preservation Act | WP | Work Proposal |