



**STATE OF VERMONT**  
JOINT FISCAL OFFICE

**MEMORANDUM**

To: Joint Fiscal Committee members  
From: Sorsha Anderson, Senior Staff Associate  
Date: May 21, 2026  
Subject: Grant Request - JFO #3278

Enclosed please find one (1) item, which the Joint Fiscal Office has received from the Administration.

**JFO #3278:** \$690,050.00 to the Department of Public Service from the State and Community Energy Programs, U.S. Department of Energy. Funds for a revolving loan program (Municipal Energy Revolving Fund) to help VT communities meet state energy goals. The funds will be managed by the Building and General Services department via a Memorandum of Understanding with the Department of Public Service. *[Received May 11, 2026]*

Please review the enclosed materials and notify the Joint Fiscal Office (Sorsha Anderson: sanderson@leg.state.vt.us) if you have questions or would like this item held for legislative review. Please submit concerns by **June 5, 2026**, or we will assume that you agree to consider as final the Governor's acceptance of this request.



**State of Vermont**  
 Department of Finance & Management  
 109 State Street, Pavilion Building  
 Montpelier, VT 05620-0401

Agency of Administration

[phone] 802-828-2376

**STATE OF VERMONT  
 FINANCE & MANAGEMENT GRANT REVIEW FORM**

<b>Grant Summary:</b>		The Municipal Energy Revolving Fund (MERF) was established by the Vermont Legislature under 2022 Act 172 Secs. 6-8. Act 172 directed the Department of Public Service (PSD) to transfer these EERLF funds to the Department of Buildings and General Services (BGS) to help capitalize the MERF. BGS will administer this new revolving loan fund program per MOU with PSD.			
<b>Date:</b>		4/30/2025			
<b>Department:</b>		PSD			
<b>Legal Title of Grant:</b>		State Energy Program IJJA 40502 BIL Funds FY2022 for the Energy Efficiency Revolving Loan Fund			
<b>Federal Catalog #:</b>		81.041			
<b>Grant/Donor Name and Address:</b>		State and Community Energy Programs U.S. Department of Energy 1000 Independence Ave, SW Washington DC 20585			
<b>Grant Period:</b>	<b>From:</b>	6/1/2024	<b>To:</b>	5/31/2029	
<b>Grant/Donation</b>		\$690,050			
	<b>SFY 1</b>	<b>SFY 2</b>	<b>SFY 3</b>	<b>Total</b>	<b>Comments</b>
<b>Grant Amount:</b>	\$50,000	\$340,000	\$300,050	\$690,050	
<b>Position Information:</b>		<b># Positions</b>	<b>Explanation/Comments</b>		
		0			
<b>Additional Comments:</b>		See attached MOU.			
<b>Department of Finance &amp; Management</b>		Adam Greshin <small>Digitally signed by Adam Greshin          Date: 2026.05.01 19:04:00</small>		(Initial)	
<b>Secretary of Administration</b>		Nick Kramer <small>E710487A28FB404..</small>		(Initial)	
<b>Sent To Joint Fiscal Office</b>		Anna Reinold		<b>Date</b>	

**REVIEWED**  
 By Anna Reinold at 2:50 pm, May 11, 2026



Jason Aronowitz  
Digitally signed by Jason Aronowitz  
 Date: 2026.04.30 20:44:42 -04'00'

<b>STATE OF VERMONT</b> <b>FINANCE &amp; MANAGEMENT GRANT REVIEW FORM</b>		



## STATE OF VERMONT REQUEST FOR GRANT (\*) ACCEPTANCE (Form AA-1)

BASIC GRANT INFORMATION				
<b>1. Agency:</b>				
<b>2. Department:</b>	Public Service			
<b>3. Program:</b>	State Energy Program: Energy Efficiency Revolving Loan Fund (SEP EE RLF)			
<b>4. Legal Title of Grant:</b>	State Energy Program IJA 40502 BIL Funds FY2022 for the Energy Efficiency Revolving Loan Fund			
<b>5. Federal Catalog #:</b>	81.041			
<b>6. Grant/Donor Name and Address:</b>				
State and Community Energy Programs U.S. Department of Energy 1000 Independence Ave, SW Washington DC 20585				
<b>7. Grant Period:</b>	<b>From:</b>	6/1/2024	<b>To:</b>	5/31/2029
<b>8. Purpose of Grant:</b>				
The Municipal Energy Revolving Fund (MERF) was established by the Vermont Legislature under Act 172 of 2022. Act 172 directed the Department of Public Service (PSD) to transfer these EERLF funds to the Department of Buildings and General Services (BGS) to help capitalize the MERF. BGS will administer this new revolving loan fund program.				
<b>9. Impact on existing program if grant is not Accepted:</b>				
If funds are not accepted, BGS will be unable to administer this revolving loan fund program required under Vermont's Act 172. Without this funding, local municipalities that were not eligible for previous direct formula grants issued by BGS will lose access to resources that could help their communities meet state energy goals.				
10. BUDGET INFORMATION				
	<b>SFY 1</b>	<b>SFY 2</b>	<b>SFY 3</b>	<b>Comments</b>
<b>Expenditures:</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	
Personal Services	\$	\$	\$	
Operating Expenses	\$	\$	\$	
Grants	\$50,000	\$340,000	\$300,050	Loans
<b>Total</b>	<b>\$50,000</b>	<b>\$340,000</b>	<b>\$300,050</b>	
<b>Revenues:</b>				
State Funds:	\$	\$	\$	
Cash	\$	\$	\$	
In-Kind	\$	\$	\$	
Federal Funds:	\$50,000	\$340,000	\$300,050	
(Direct Costs)	\$	\$	\$	
(Statewide Indirect)	\$	\$	\$	
(Departmental Indirect)	\$	\$	\$	
Other Funds:	\$	\$	\$	
Grant (source )	\$	\$	\$	
<b>Total</b>	<b>\$50,000</b>	<b>\$340,000</b>	<b>\$300,050</b>	Total: \$690,050
<b>Appropriation No:</b>			<b>Amount:</b>	\$



# STATE OF VERMONT REQUEST FOR GRANT (\*) ACCEPTANCE (Form AA-1)

<b>End Form AA-1</b>
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(*) The term "grant" refers to any grant, gift, loan, or any sum of money or thing of value to be accepted by any agency, department, commission, board, or other part of state government (see 32 V.S.A. §5).
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**MEMORANDUM OF UNDERSTANDING  
between  
Vermont Department of Public Service  
and  
Vermont Department of Buildings and General Services**

**1. PURPOSE**

This Memorandum of Understanding (“MOU” or “Agreement”) is executed for the purpose of clearly describing the respective roles of the Department of Public Service (“PSD”) and the Department of Buildings and General Services (BGS), (collectively, the “Parties”) regarding creation and administration of a revolving loan fund program, titled the Municipal Energy Revolving Fund (MERF) as part of the Municipal Energy Resilience Program (MERP). This new MERF was authorized by the Vermont Legislature, [Vermont Acts and Resolves No. 172 of 2022](#) (“Act 172”), which directed BGS to create and administer a new revolving loan fund program, titled the Municipal Energy Revolving Fund (MERF) as part of the Municipal Energy Resilience Program (MERP).

According to Act 172, the MERF is to receive funding under two programs in the Infrastructure Investment and Jobs Act (IIJA, otherwise known as the Bipartisan Infrastructure Law or BIL): the Energy Efficiency and Conservation Block Grant (EECBG) program and the Energy Efficiency Revolving Loan Fund (EERLF) Capitalization Grant (Pub. L. No. 117-58, sections 40502 and 40552) administered by the U.S. Department of Energy (DOE). Act 172 states that PSD shall transfer funds to BGS “...to the extent permitted by federal law” for the Municipal Energy Revolving Fund.

PSD is entering into this MOU for the purpose of granting EERLF funds, under the terms and conditions below, for the purpose of facilitating loans. The EERLF funds subject to this agreement are exclusively authorized for the above purpose and no other authorized use may be undertaken by either party without amendment to this MOU.

This MOU pertains to the allocation of EERLF funds only.

**2. EFFECTIVE DATES**

This Agreement begins on May 22, 2025 and ends on May 22, 2030.

**3. AUTHORIZED REPRESENTATIVES**

<b>Role</b>	<b>Name &amp; Title</b>	<b>Email Address</b>
PSD Program Point of	Cherie Yaeger	<a href="mailto:Cherie.Yaeger@vermont.gov">Cherie.Yaeger@vermont.gov</a>

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Contact	Grant Manager	
PSD Administrative Point of Contact	Melissa Bailey Director of State Energy Office	<a href="mailto:Melissa.Bailey@vermont.gov">Melissa.Bailey@vermont.gov</a>
BGS Program Point of Contact	Brian Sewell Energy Program Manager	<a href="mailto:Brian.Sewell@vermont.gov">Brian.Sewell@vermont.gov</a>
BGS Administrative Point of Contact	Megan Fuller Grants Management Specialist	<a href="mailto:Megan.Fuller@vermont.gov">Megan.Fuller@vermont.gov</a>

**AGREEMENT:**

The parties agree to the following:

**BGS's RESPONSIBILITIES**

**Task 1: MERF Program Design**

1. State clear objectives for lending to municipal governments established under the Energy Efficiency and Conservation Block Grant Program (EECBG) and congruent with Act 172.
  - Financial Need
  - Geography
  - Ability to pay
2. Identify eligible municipal entities and eligible energy improvement activities to be implemented using EERLF loan funds congruent with federal Terms and Conditions for the EERLF, and the provisions of Act 172. All covered municipalities, excluding schools, are eligible entities able to apply for funding under Act 172.
  - a. Municipalities who applied for but were not awarded MERP Grant funds will be given preference in eligibility to apply for loans
  - b. All applicants must have a complete energy audit report for the facilities applied for that is compliant with ASHRAE 2 Commercial audits.
3. Develop revolving loan fund administrative processes and procedures congruent with federal and State requirements, and Act 172 including determination of whether the MERF shall be administered by BGS or a third-party administrator.

BGS has chosen to select a third-party, Vermont Bond Bank (VBB) to administer the EERLF funds. BGS shall submit documentation to PSD on the selection process and final candidate,

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including means by which BGS shall fulfill its administrative oversight responsibilities with a selected third-party administrator. Any third-party administrator shall be subject to the full terms and conditions of this award that must flow down.

The VBB will support the Department of Buildings & General Services in administering the municipal energy revolving fund established under Act 172. The Vermont Bond Bank will assist in developing the program's financing structure, maintaining efficient financial procedures, and managing loan disbursement and repayment processes. It will also help define the documentation municipalities must submit to meet the scoring metrics outlined in Act 172 and support the collection and evaluation of this information during the application process.

4. Develop procedures and timelines for:
  - Municipal loan solicitation, application, underwriting, and credit analysis
  - Loan determination and recommendation to BGS Commissioner's Office Review and final approval of MERF loans by the BGS Commissioner's Office
  - Loan documentation and monitoring
  - Managing situations where a credit downgrade positions a municipality to potentially fail to make regular loan payments Loan default

Loan requirements: BGS shall determine the actions or requirements to be attached to MERF loans such as relevant federal, state, and local provisions; access to state or municipal procurement programs; audits; technical project review and approval; early payback provisions; data/information confidentiality and public access; consequences for default, etc.

Determine eligibility for loan category (EERLF) based on compliance with DOE energy assessment software requirements. To be eligible for a loan under the EERLF, buildings must be audited using software compliant with DOE's BuildingSync software. DOE exempted BGS' four original MERP energy assessment providers from compliance related to BuildingSync. Additional assessment providers brought into the MERP by BGS have not received this exemption. Municipalities with properties that received an assessment or audit by a firm not explicitly exempted from compliance with DOE building auditing software requirements under the EERLF shall be eligible for financing via the MERF. BGS shall provide documentation in the loan file that identifies facility assessment compliance status with DOE BuildingSync software or exemption per guidance from DOE.

Set interest rates, application/loan program administration fees, closing costs, and repayment terms including projections for energy payback. Set maximum and minimum loan amounts and loan tenors. Interest rates are not subject to approval by the State of Vermont Treasurer. The Commissioner of BGS may set interest rates for the EERLF loan program.

Develop procedures for managing DOE funds in perpetuity following DOE requirements.

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Submit procedures to PSD for review before procedures are finalized.

Determine all loan conditions and terms necessary to ensure timely repayment of loan capital to the MERF. This will include program attributes (e.g., loan security/collateralization) and actions required to resolve cases of delinquency and/or default by a municipal government borrower following standard municipal intercept procedures by the Treasurer or other relevant procedures.

Develop the process for disbursing funds to municipal borrowers, receiving periodic loan payments from borrowers, and recording all financial transactions associated with each loan. The Financial Services Division (FSD) will work with BGS to set terms compliant with State requirements in VISION.

**Task 2. MERF Implementation**

1. Create a marketing plan to generate interest among municipalities for participation in the MERF and communicate essential information that guides potential borrowers through the process.
2. Establish that the MERF account is where the EERLF shall be deposited.
3. Monitor and track financial performance of loans for the duration of the loan terms. Report on findings of material significance to the PSD grant administrator.
4. Follow all processes for disbursing funds to municipal borrowers, receiving periodic loan payments from borrowers, and recording all financial transactions associated with each loan.

**MERP Loan Program Terms and Conditions**

1. Loan applicants shall be required to document compliance with all relevant federal, State, and local permits and regulations associated with the project.

All MERP loans must comply with all applicable federal, state, and local regulations including those in Standard State Provisions and Federal Provisions, specifically:

a. Davis Bacon and Related Acts (DBRA) Requirements

Collects wage data for projects to ensure prevailing wage requirements are being met in accordance with Davis-Bacon Act provisions. Projects that receive loans or grants through a state's RLF program to complete energy upgrades or retrofits, which includes construction, alteration, and/or repair, are required to submit weekly wage reports via LCPtracker for the duration of the construction period of the project.1 States are required to submit semi-annual reports on PAGE summarizing the DBA compliance status. Find resources and trainings on

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DBA reporting and learn more about Davis-Bacon Act as Applicable in IJJA SEP.

- i. Weekly and semi-annual: [DBA reporting in the LCP tracker](#)
  - ii. Semi-Annual DBA Reporting & Weekly DBA Wage Reporting Due Date: April 21st and October 21st
- b. National Environmental Protection Act (NEPA) Requirements
- NEPA:** The RLF NEPA determination does not require quarterly NEPA logs. The following activities/projects now require submission of an environmental questionnaire (<https://www.eere-pmc.energy.gov/NEPA.aspx>) along with the submission of a statement of work (and project layout if there are ground disturbing activities) for each applicable project for review by DOE:
- Any ground disturbing activities
  - Trees removed or trimmed
  - Solar electricity installations above 60 kW in size
  - Solar thermal or solar hot water systems greater than 200,000 BTU/hour in size
  - Energy storage systems greater than 1,000 kWh in size.

**Training:** BGS will be required to review the Step-by-Step EQ-1 Submission Guide for DOE Award Recipients for more information on how to submit the environmental questionnaire required for NEPA.

- c. Build America Buy America (BABA) Requirements

**MERP Loan Program Reporting**

Report project energy performance quarterly. Report due dates are January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup> and October 15<sup>th</sup>. This reporting shall be in fulfillment of PSD's reporting requirements to DOE in addition to any State reporting requirements established under Act 172.

Reporting Periods:

- a. October – December: January 15<sup>th</sup>
- b. January – March: April 15<sup>th</sup>
- c. April – June: July 15<sup>th</sup>
- d. July – September: October 15<sup>th</sup>

**Information to be reported quarterly for each reporting period:**

**Loan Metrics**

- a. Number of loans given (count)
- b. Monetary value of loans given (dollars)
- c. Number of audits funded with loans (count)
- d. Number of loans written off (count)
- e. Monetary value of loans written off (dollars)

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- f. Number of loans fully repaid (count)
- g. Monetary value of loans fully repaid (dollars)
- h. Number of loans 90+ days past due (count)
- i. Monetary value of loans 90+ days past due (dollars)

**Financial Metrics (Leveraged)**

- a. Total dollars of private capital loaned (dollars)
- b. Other leveraged funds (dollars)
- c. Total Funds

**Process Metrics**

Energy Audits: Energy audits, by sector and savings unit type

Savings unit type: Report separate metrics for each of these types: Electricity (kWh), Fuel Oil (MMBtu) and Natural Gas (MMBTU)

- a. Number of investments grade audits (IGAs) performed (count)
- b. Number of non-investment grade audits (IGAs) performed (count)
- c. Square footage of buildings/facilities audited (square feet)
- d. Auditor's projection of energy savings (user-specified units)
- e. Average daily flow of WWTF audited (millions of gallons per day)
- f. Number of projects started based on audits (count)

Retrofits: Buildings retrofitted, by sector and savings unit type

Savings unit type: Report separate metrics for each of these types: Electricity (kWh), Fuel Oil (MMBtu) and Natural Gas (MMBTU)

- a. Number of buildings retrofitted (count)
- b. Square footage of buildings retrofitted (square feet)
- c. Estimated project savings (user-specified units)

**Reporting BGS Administration Costs**

Quarterly reporting must contain amount of EE RLF funds used for BGS management, in terms of administrative costs, broken down into employee name, hours worked on program, employee rate and fringe rate for total hours spent during the reporting period.

- a. Employee Name
- b. Employee hours worked on administering the program
- c. Total cost of employee hourly rate paid for this time period while administering the

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program

- d. Total cost of employee fringe paid for this time period while administering the program

**Timeline**

Application for loans must be live by May 27, 2025.

<b>Key Task/Element</b>	<b>Description</b>	<b>Timeline<sup>2</sup></b>
Program Development	Develop and sign MOUs between PSD and BGS for both EECBG funds and EERLF funds being drawn down to BGS. Designate the EERLF fund as the money in which the loans operate from, and designate the EECBG fund as administrative costs and grants towards loan project support/management and energy audit upgrades.	Week of 5/26/2025
Establishment of Loan Guidance and Provisions	Develop and finalize loan program provisions which include requirements and restrictions on what both EECBG funds and EERLF funds can be used for and how they will be administered.	By 5/26/2025
Establishment of Partnerships	Develop and sign an MOU between BGS and the Vermont Bond Bank to establish administrative duties for both parties	By 5/26/2025
<u>Development of Loan Application(s)</u>	<u>Using the Vermont Bond Bank’s loan administrative experience, develop application(s) to the EERLF loans that will capture all the necessary requirements to score municipal applicants, in alignment with stipulations in Act 172 and with standard municipal loan programs.</u>	By 5/26/2025
<u>Connect with Regional Partners</u>	<u>BGS will utilize the Vermont Regional Planning Commissions (RPCs) they retain agreements with to ensure municipalities are aware and prepared to apply for a MERF loan, and/or request project assistance/audit upgrades. BGS will begin advertising the upcoming loan program establishment through their online presence.</u>	Continuous meetings with BGS and RPCs occur biweekly
<u>Loan Program Establishment</u>	<u>BGS will make the EERLF loan application/EECBG grant application and guidance on the program available for municipal applicants.</u>	No later than 5/27/2025
<u>Development of Reference</u>	<u>As questions present themselves on the</u>	Starting week of

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<u>Materials</u>	federal/state requirements of the loan/grant, materials will be developed and distributed to clarify acceptable loan applications and projects.	5/26/2025
<u>Reporting to Fund Administrators</u>	As the loan program is administered by BGS and the Vermont Bond Bank, reports will be developed in alignment with the <a href="#">Financial Assistance Reporting Checklist (FARC)</a> , <a href="#">DOE EERE 355</a> (found in DOE grant agreement(s)), which will be reviewed and sent to PSD, which will then be reviewed and sent to the US Department of Energy.	July 2025

**BUDGET**

Loans to municipalities: \$621,050.00  
BGS Administration of Program: \$69,000.00

**Payment Terms**

**Maximum amount payable: \$690,050.00**

Upon full execution of this MOU funds totaling \$690,050.00 will be transferred by TSF from PSD to BGS.

BGS agrees that all funds are to be spent as detailed in this agreement and shown in the Budget. If the funds are not to be spent exactly as detailed in the Budget, the Subrecipient must obtain written approval from the Grant Administrator prior to the expenditure of such funds.

**4. AMENDMENTS**

No changes, modifications, or amendments to the terms and conditions of this MOU shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the Parties.

**5. CANCELLATION/TERMINATION**

This MOU may be suspended or cancelled/terminated by either party by giving written notice at least 30 days in advance.

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Memorandum of Understanding**

**MOU # 02240-FY25-EERLF-MOU-01**

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS MEORANDUM OF UNDERSTANDING.

**By the Department of Public Service:**

Date:

Signature:

Kerrick Johnson  
Commissioner  
Department of Public Service

**By the Department of Buildings and General Services:**

Date:

Signature:

Wanda Minoli  
Commissioner  
Department of Buildings & General Services



## **Bipartisan Infrastructure Law (BIL)**

### **Special Terms and Conditions**

The Grantee (“Recipient”), which is identified in Block 5 of the Assistance Agreement, and the Office of State and Community Energy Programs (“SCEP”) an office within the United States Department of Energy (“DOE”), enter into this Award, referenced above, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 1 to this Award.

This Award consists of the following documents, including all terms and conditions therein:

	Assistance Agreement
	Special Terms and Conditions
Attachment 1	Narrative
Attachment 2	Federal Assistance Reporting Checklist and Instructions
Attachment 3	Budget Information SF-424A
Attachment 4	Intellectual Property Provisions
Attachment 5	Master File
Attachment 6	NEPA Determination
Appendix A	Wage Determination

The following are incorporated into this Award by reference:

- DOE Assistance Regulations, 2 CFR part 200 as supplemented by 2 CFR part 910 at <http://www.eCFR.gov>.
- National Policy Requirements (November 12, 2020) at <http://www.nsf.gov/awards/managing/rtc.jsp>.
- Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL).
- The Recipient’s application/proposal as approved by SCEP.

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## Subpart A. General Provisions

### Term 1. Legal Authority and Effect

A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

The Recipient may accept or reject the Award. A request to draw down DOE funds or acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by DOE, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of this Award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

### Term 2. Flow Down Requirement

The Recipient agrees to apply the terms and conditions of this Award, as applicable, including the Intellectual Property Provisions, to all subrecipients (and subcontractors, as appropriate), as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all subrecipients (and subcontractors, as appropriate), and to require their strict compliance therewith.

### Term 3. Compliance with Federal, State, and Municipal Law

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Award. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

### Term 4. Inconsistency with Federal Law

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Award must be referred to the DOE Award Administrator for guidance.

### Term 5. Federal Stewardship

SCEP will exercise normal Federal stewardship in overseeing the project activities performed under this Award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address 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.

## **Term 6. Federal Involvement**

### **A. Review Meetings**

The Recipient, including but not limited to, the principal investigator (or, if applicable, co-principal investigators), is required to participate in periodic review meetings with SCEP. Review meetings enable SCEP to assess the work performed under this Award and determine whether the Recipient has timely achieved the technical milestones and deliverables stated in Attachment 1 to this Award.

SCEP shall determine the frequency of review meetings and select the day, time, and location of each review meeting and shall do so in a reasonable and good faith manner. SCEP will provide the Recipient with reasonable notice of the review meetings.

For each review meeting, the Recipient is required to provide a comprehensive overview of the project, including:

- The Recipient's technical progress compared to the Milestone Summary Table stated in Attachment 1 to this Award.
- The Recipient's actual expenditures compared to the approved budget in Attachment 3 to this Award.
- Other subject matter specified by the DOE Technology Manager/Project Officer.

### **B. Project Meetings**

The Recipient is required to notify SCEP in advance of scheduled tests and internal project meetings that would entail discussion of topics that could result in major changes to the baseline project technical scope/approach, cost, or schedule. Upon request by SCEP, the Recipient is required to provide SCEP with reasonable access (by telephone, webinar, or otherwise) to the tests and project meetings. The Recipient is not expected to delay any work under this Award for the purpose of government insight.

### **C. Site Visits**

SCEP's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Recipient must provide, and must require subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

#### **D. Technical Milestones and Deliverables**

Attachment 1 to this Award establishes technical milestones and deliverables. If the Recipient fails to achieve two or more technical milestones and deliverables, SCEP may renegotiate the Statement of Project Objectives and/or Milestone Summary Table in Attachment 1 to this Award. In the alternative, SCEP may deem the Recipient's failure to achieve these technical milestones and deliverables to be material noncompliance with the terms and conditions of this Award and take action to suspend or terminate the Award.

#### **E. SCEP Access**

The Recipient must provide any information, documents, site access, or other assistance requested by SCEP for the purpose of its federal stewardship or substantial involvement.

### **Term 7. NEPA Requirements**

#### **A. Authorization**

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of federal funds.

For Recipients with a DOE executed Historic Preservation Programmatic Agreement (PA), DOE has determined that the "Allowable Activities" listed in the State Energy Program NEPA Determination (Attachment 5) are categorically excluded and require no further NEPA review, when the Recipient demonstrates the activities are compliant with the restrictions of the "Allowable Activities". The Recipient is thereby authorized to use Federal funds for the "Allowable Activities" listed in the SEP IIJA Provision 40502 Administrative and Legal Requirements Document (SEP-IIJA-EE RLF ALRD-2022) NEPA Determination, subject to the Recipient's compliance with paragraphs B. "Conditions" and C. "Future Modifications," and the restrictions listed in Attachment 5.

#### **B. Conditions**

Activities/projects not listed under "Allowable Activities" are subject to additional NEPA review and approval by DOE. For activities/projects requiring additional NEPA review, Recipients must complete the environmental questionnaire (<https://www.eere-pmc.energy.gov/NEPA.aspx>) and receive notification from DOE that the NEPA review has been completed and approved by the Contracting Officer prior to initiating the project or activities.

1. This NEPA Determination only applies to activities funded by the Administrative and Legal Requirements Document for the State Energy Program Energy Efficiency Revolving Loan Fund Capitalization Grant Program.

2. Activities not listed under "Allowable Activities" including ground disturbing activities, activities on tribal properties older than forty-five (45) years old, and tree removal or tree trimming, are subject to additional NEPA review and approval by DOE. For activities requiring additional NEPA review, Recipients must complete the environmental questionnaire found at <https://www.eere-pmc.energy.gov/NEPA.aspx> and receive notification from DOE that the NEPA review has been completed with an approval from the Contracting Officer prior to initiating the project or activities.
3. This authorization does not include activities where the following elements exist: extraordinary circumstances; cumulative impacts or connected actions that may lead to significant effects on the human environment; or any inconsistency with the "integral elements" (as contained in 10 CFR Part 1021, Appendix B) as they relate to a particular project.
4. The Recipient must identify and promptly notify DOE of extraordinary circumstances, cumulative impacts or connected actions that may lead to significant effects on the human environment, or any inconsistency with the "integral elements" (as contained in 10 CFR Part 1021, Appendix B) as they relate to project activities.
5. Recipients must have a DOE executed Historic Preservation Programmatic Agreement and adhere to the terms and restrictions of its DOE executed Historic Preservation Programmatic Agreement. DOE executed Historic Preservation Programmatic Agreements are available at: <https://www.energy.gov/scep/historic-preservation-executed-programmatic-agreements>.
6. Most activities listed under "Allowable Activities" are more restrictive than the Categorical Exclusion. The restrictions listed in the "Allowable Activities" must be followed.
7. Recipients and subrecipients that are 3rd party administrators, if applicable, are responsible for reviewing the online NEPA and Historic preservation PowerPoint trainings at [www.energy.gov/node/4816816](http://www.energy.gov/node/4816816) and contacting NEPA with any questions at [GONEPA@ee.doe.gov](mailto:GONEPA@ee.doe.gov).
8. This authorization excludes any activities that are otherwise subject to a restriction set forth elsewhere in the Award.

C. Modifications and Activities not covered by the NEPA Determination

If the Recipient intends to undertake activities or projects that do not fall within the NEPA determination, those activities and projects are subject to additional NEPA review by DOE and are not authorized for Federal funding unless and until the Contracting Officer provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or projects prior to written authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities and projects, and such costs may not be recognized as allowable cost match.

## **Term 8. Historic Preservation**

### **A. Authorization**

DOE must comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) prior to authorizing the use of Federal funds. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. Recipients with a DOE-executed Programmatic Agreement (PA) must comply with the requirements identified in paragraph B. Conditions below.

### **B. Conditions**

Recipients with a DOE executed historic preservation Programmatic Agreement (PA) must adhere to all the Stipulations of their PA. All DOE executed PAs are available on the State and Community Energy Programs website: <https://www.energy.gov/scep/historic-preservation-executed-programmatic-agreements>.

In addition to the Stipulations in their PAs, Recipients must notify DOE via [GONEPA@ee.doe.gov](mailto:GONEPA@ee.doe.gov) whenever:

- Either the Recipient or the State Historic Preservation Office (SHPO)/Tribal Historic Preservation Office (THPO) believes that the Criteria of Adverse Effect pursuant to 36 CFR § 800.5, apply to the proposal under consideration by DOE;
- There is a disagreement between an Applicant, or its authorized representative, and the SHPO/THPO about the scope of the area of potential effects, identification and evaluation of historic properties and/or the assessment of effects;
- There is an objection from a consulting party or the public regarding their involvement in the review process established by 36 CFR Part 800, Section 106 findings and determinations, or implementation of agreed upon measures; or
- There is the potential for a foreclosure situation or anticipatory demolition as defined under 36 CFR §800.9 (b) and 36 CFR § 800.9 (c).

## **Term 9. Performance of Work in United States**

### **A. Requirement**

All work performed under this Award must be performed in the United States unless the Contracting Officer provides a waiver. This requirement does not apply to the purchase of supplies and equipment; however, the Recipient should make every effort to purchase supplies and equipment within the United States. The Recipient must flow down this requirement to its subrecipients and subcontractors.

**B. Failure to Comply**

If the Recipient fails to comply with the Performance of Work in the United States requirement, the Contracting Officer may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Recipient cost share regardless if the work is performed by the Recipient, subrecipients, vendors or other project partners.

**C. Waiver for Work Outside the U.S.**

All work performed under this Award must be performed in the United States. However, the Contracting Officer may approve the Recipient to perform a portion of the work outside the United States under limited circumstances. The Recipient must obtain a waiver from the Contracting Officer prior to conducting any work outside the U.S. To request a waiver, the Recipient must submit a written waiver request to the Contracting Officer, which includes the following information:

- The rationale for performing the work outside the U.S.;
- A description of the work proposed to be performed outside the U.S.;
- Proposed budget of work to be performed; and
- The countries in which the work is proposed to be performed.

For the rationale, the Recipient must demonstrate to the satisfaction of the Contracting Officer that the performance of work outside the United States would further the purposes of the ALRD or Program that the Award was selected under and is in the economic interests of the United States. The Contracting Officer may require additional information before considering such request.

**Term 10. Foreign National Involvement**

The Recipient and project participants (including subrecipients and contractors) who anticipate involving foreign nationals in the performance of an award, may be required to provide DOE with specific information about each foreign national to satisfy requirements for foreign national participation. A foreign national is defined as any person who is not a U.S. citizen by birth or naturalization. The volume and type of information collected may depend on various factors associated with the award.

**Term 11. Foreign National Participation**

The recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the recipient and subrecipients:

1. Any current or pending subsidiary, foreign business entity, or offshore entity that is based in or funded by any foreign country of risk or foreign entity based in a country of risk;

2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an entity owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the recipient or subrecipients that increases foreign ownership related to a country of risk. Each notification shall be accompanied by a complete and up-to-date capitalization table showing all equity interests held including limited liability company (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 of all equity on fully diluted basis. For each equity holder, provide the place of incorporation and the principal place of business, as applicable. If the equity holder is a natural person, identify the citizenship(s);
4. Any current or pending 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;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any changes to the recipient or the subrecipients' board of directors, including additions to the number of directors, the identity of new directors, as well as each new director's citizenship, shareholder affiliation (if applicable); each notification shall include a complete up-to-date 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.
7. Any proposed changes to the equipment used on the project that would result in:
  - a. Equipment originally made or manufactured in a foreign country of risk (including relabeled or rebranded equipment).
  - b. Coded equipment where the source code is written in a foreign country of risk.
  - c. Equipment from a foreign country of risk that will be connected to the internet or other remote communication system.
  - d. Any companies 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.

Should DOE determine the connection poses a risk to economic or national security, DOE will require measures to mitigate or eliminate the risk.

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

Recognizing the disclosures may contain business confidential information, subrecipients may submit their disclosures directly to DOE.

**Term 12. Post-Award Due Diligence Reviews**

During the period of performance of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

**Term 13. Reporting Requirements****A. Requirements**

The reporting requirements for this Award are identified on the Federal Assistance Reporting Checklist, attached to this Award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the Award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

**B. Dissemination of Scientific and Technical Information**

Scientific and Technical Information (STI) generated under this Award will be submitted to DOE via the Office of Scientific and Technical Information's Energy Link ([E-Link](#)) system. STI submitted under this Award will be disseminated via DOE's [OSTI.gov](#) website subject to approved access limitations. Citations for journal articles produced under the Award will appear on the [DOE PAGES](#) website.

**C. Restrictions**

Scientific and Technical Information submitted to E-Link must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

**Term 14. Lobbying**

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.

**Term 15. Publications**

The Recipient is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award, whether copyrighted or not:

- *Acknowledgment:* “This material is based upon work supported by the U.S. Department of Energy’s Office of State and Community Energy Programs (SCEP) under Award Number DE-EE0010371.”
- *Full Legal Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

*Abridged Legal Disclaimer:* “The views expressed herein do not necessarily represent the views of the U.S. Department of Energy or the United States Government.”

Recipients should make every effort to include the full Legal Disclaimer. However, in the event that recipients are constrained by formatting and/or page limitations set by the publisher, the abridged Legal Disclaimer is an acceptable alternative.

#### **Term 16. No-Cost Extension**

As provided in 2 CFR 200.308, the Recipient must provide the Contracting Officer with notice in advance if it intends to utilize a one-time, no-cost extension of this Award. The notification must include the supporting reasons and the revised period of performance. The Recipient must submit this notification in writing to the Contracting Officer and DOE Technology Manager/ Project Officer at least 30 days before the end of the current budget period.

Any no-cost extension will not alter the project scope, milestones, deliverables, or budget of this Award.

#### **Term 17. Property Standards**

The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

#### **Term 18. Insurance Coverage**

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

**Term 19. Real Property**

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (1) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (2) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (3) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award. Also see 2 CFR 910.360 for additional requirements for real property for For-Profit recipients.

**Term 20. Equipment**

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

A state must use equipment acquired under a federal award by the State in accordance with state laws and procedures.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity.

Disposition will be made as follows: (1) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (2) Non-Federal entity may retain title or sell the equipment after compensating DOE as described in 2 CFR 200.313(e)(2); or (3) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR 910.360 for additional requirements for equipment for For-Profit recipients. See also 2 CFR 200.439 Equipment and other capital expenditures.

### **Term 21. Supplies**

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

### **Term 22. Property Trust Relationship**

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

### **Term 23. Record Retention**

Consistent with 2 CFR 200.334 through 200.338, the Recipient is required to retain records relating to this Award.

### **Term 24. Audits**

#### **A. Government-Initiated Audits**

The Recipient must provide any information, documents, site access, or other assistance requested by SCEP, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient's records relating to this Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Recipient's financial records or administrative records relating to this Award at any time. Audits or reviews may be performed to determine if the Recipient has an adequate financial management system to estimate, bill, and record federal government expenditures in accordance with the criteria in 2 CFR 200.302, Generally Accepted Accounting Principles (GAAP), Generally Accepted Government Accounting Standards (GAGAS), and Standard Form 1408. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

**B. Annual Independent Audits (Single Audit or Compliance Audit)**

The Recipient must comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit).

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term and must be paid for by the Recipient. To minimize expense, the Recipient may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit depending on Recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.339, Remedies for Noncompliance.

**Term 25. Site Visits and Recipient Administrative Organizational Reviews**

SCEP's authorized representatives have the right to make site visits and conduct Recipient Administrative Organizational Reviews to review the project and management control systems and to provide technical assistance, as appropriate. The Recipient must provide, and must require its subrecipients and contractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. SCEP will make reasonable efforts to ensure these site visits do not interfere with or unduly delay project work.

**Term 26. Indemnity**

The Recipient shall indemnify DOE and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of DOE officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

## Subpart B. Financial Provisions

### Term 27. Maximum Obligation

The maximum obligation of DOE for this Award is the total “Funds Obligated” as stated in Block 13 of the Assistance Agreement to this Award.

### Term 28. Refund Obligation

The Recipient must refund any excess payments received from SCEP, including any costs determined unallowable by the Contracting Officer. Upon the end of the project period (or the termination of the Award, if applicable), the Recipient must refund to SCEP the difference between (1) the total payments received from SCEP, and (2) the Federal share of the costs incurred (not including retained program income). Refund obligations under this Term do not supersede the annual reconciliation or true up process if specified under the Indirect Cost Term.

### Term 29. Allowable Costs

DOE determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by federal funds, costs claimed by its subrecipients and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable, and allocable, and comply with the cost principles. Upon request, the Recipient is required to provide such records to DOE. Such records are subject to audit. Failure to provide DOE adequate supporting documentation may result in a determination by the Contracting Officer that those costs are unallowable.

The Recipient is required to obtain the prior written approval of the Contracting Officer for any foreign travel costs.

### Term 30. Grants and Technical Assistance Cap (25%)

States may use no more than 25 percent of the funding provided by DOE under this program for grants and technical assistance to eligible recipients. Please note that any grants or technical assistance provided with these funds must go to directly benefit the eligible recipients described below.

- (a) Commercial entities eligible for grants and technical assistance must be a business, non-profit organization or public building that:
  1. conducts a majority of its business in the state that provides the loans;

2. owns or operates 1 or more commercial buildings or commercial space within a building that serves multiple functions, such as a building for commercial and residential operations; and
  3. has fewer than 500 employees.
- (b) Residential entities eligible for grants and technical assistance must be a low-income individual that owns a residential building. For purposes of this project, the term “low-income individual” means an individual who—
1. Receives, or in the past 6 months has received, or is a member of a family that is receiving or in the past 6 months has received, assistance through the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C 2011 et seq.), the program of block grants to States for temporary assistance for needy families program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or the supplemental security income program established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or State or local income-based public assistance;
  2. Is in a family with total family income that does not exceed the higher of—
    - i. The poverty line; or
    - ii. 70 percent of the lower living standard income level;
  3. Is a homeless individual (as defined in section 12473(6) of title 34), or a homeless child or youth (as defined under section 11434a(2) of title 42);
  4. Is a foster child on behalf of whom State or local government payments are made; or
  5. Is an individual with a disability whose own income meets the income requirement of clause (b), but who is a member of a family whose income does not meet that requirement.

The term “lower living standard income level” referenced in subclause (b)(2)(ii) above is defined as “that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary of Labor based on the most recent lower living family budget issued by the Secretary.”

### **Term 31. Administrative Cost Cap (10%)**

States may use no more than 10 percent of the funding provided by DOE under this program for administrative expenses. BIL and SEP regulations do not define the administrative cost categories. Any expenditure, allowed by the Office of Management and Budget (OMB) cost principles, or by a Grantee or Subgrantee may be charged as administrative cost. However, certain costs in this Program that are excluded from other categories can only be administrative (e.g., third party program administrators, marketing costs, and costs to acquire and operate IT systems to run the program). Grantee Administration and Subgrantee Administration are unique to each organization. The organization must define its administrative costs consistent with the generally accepted accounting practices and procedures within the organization. Indirect costs can be included in Grantee Administration and will be considered an allowable cost provided there is a federally approved indirect rate(s) or cost allocation plan. The indirect cost rate used may be approved by a federal department or agency other than DOE.

See 2 CFR 200.414 Indirect (F&A) costs for more information. The rate/amount allowable does not invalidate the program budget category limits.

## **Term 32. Indirect Costs**

### **A. Indirect Cost Allocation:**

The budget for this Award does not include an allocation of segregated indirect billing rates. Therefore, indirect charges shall not be charged under allocated billing rates, nor shall reimbursement be requested for this project for segregated indirect cost billing rates, nor shall any indirect charges for this project be allocated to any other federal-federally sponsored project. The Recipient cannot claim indirect costs separately as cost share.

### **B. Fringe Cost Allocation:**

The budget for this award does not include an allocation of segregated fringe billing rates. Fringe benefit costs have been found reasonable as incorporated in the Recipient's burdened labor rate or under an allocated indirect cost billing rate. Therefore, fringe benefit costs shall not be charged as a separate rate allocation to this Award. SCEP will not reimburse fringe benefit costs as a separate budget item. Fringe benefit costs for this Award cannot be allocated as a separate rate allocation to any other federally-sponsored project.

### **C. Subrecipient Indirect Costs (If Applicable):**

The Recipient must ensure its subrecipient's indirect costs are appropriately managed, have been found to be allowable, and comply with the requirements of this Award and 2 CFR Part 200 as amended by 2 CFR Part 910.

### **D. Indirect Cost Stipulations:**

#### **i. Modification to Indirect Cost Billing Rates**

SCEP will not modify this Award solely to provide additional funds to cover increases in the Recipient's indirect cost billing rate(s). Adjustments to the indirect cost billing rates must be approved by the Recipient's Cognizant Agency or Cognizant Federal Agency Official.

The Recipient must provide a copy of an updated NICRA or indirect rate proposal to the DOE Award Administrator in order to increase indirect cost billing rates. If the Contracting Officer provides prior written approval, the Recipient may incur an increase in the indirect cost billing rates. Reimbursement will be limited by the budgeted dollar amount for indirect costs for each budget period as shown in Attachment 3 to this Award.

1. If the Recipient's actual and final annual indirect cost billing rate(s) reflect that Recipient invoiced at higher billing rates than actually incurred, the Recipient must refund the Government the over-recovered amounts.
2. If the Recipient's actual and final annual indirect cost billing rate(s) reflect that the Recipient invoiced at lower billing rates than actually incurred, the Recipient may not be reimbursed for increases in its indirect cost rate, which resulted in an under-recovery. Increased indirect cost billing rates cannot be retroactively applied to the DOE award.

**ii. Award Closeout**

The closeout of the DOE award does not affect (1) the right of the DOE to disallow costs and recover funds on the basis of a later audit or other review; (2) the requirement for the Recipient to return any funds due as a result of later refunds, corrections or other transactions including final indirect cost billing rate adjustments; and (3) the ability of the DOE to make financial adjustments to a previously closed award resolving indirect cost payments and making final payments.

**Term 33. Decontamination and/or Decommissioning (D&D) Costs**

Notwithstanding any other provisions of this Award, the Government shall not be responsible for or have any obligation to the Recipient for (1) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (2) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Award, whether said work was performed prior to or subsequent to the effective date of the Award.

**Term 34. Use of Program Income**

If the Recipient earns program income during the project period as a result of this Award, the Recipient must add the program income to the funds committed to the Award and used to further eligible project objectives.

**Term 35. Payment Procedures**

**A. Method of Payment**

Payment will be made by advances through the Department of Treasury's ASAP system.

**B. Requesting Advances**

Requests for advances must be made through the ASAP system. The Recipient may submit requests as frequently as required to meet its needs to disburse funds for the Federal share of project costs. If feasible, the Recipient should time each request so that the Recipient receives payment on the same day that the Recipient disburses funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.

**C. Adjusting Payment Requests for Available Cash**

The Recipient must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from SCEP.

**D. Payments**

All payments are made by electronic funds transfer to the bank account identified on the Bank Information Form that the Recipient filed with the U.S. Department of Treasury.

**E. Unauthorized Drawdown of Federal Funds**

For each budget period, the Recipient may not spend more than the Federal share authorized to that particular budget period, without specific written approval from the Contracting Officer. The Recipient must immediately refund SCEP any amounts spent or drawn down in excess of the authorized amount for a budget period. The Recipient and subrecipients shall promptly, but at least quarterly, remit to DOE interest earned on advances drawn in excess of disbursement needs and shall comply with the procedure for remitting interest earned to the Federal government per 2 CFR 200.305, as applicable.

**F. Supporting Documents for Agency Approval of Payments**

DOE may require Agency pre-approval of payments. If the Agency approval requirement is in effect for the Recipient's Award, the ASAP system will indicate that Agency approval is required when the Recipient submits a request for payment.

The Recipient must notify the DOE Technical Project Officer and DOE Award Administrator identified on the Assistance Agreement that a payment request has been submitted.

The following items are required to be submitted to the DOE Technical Project Officer and DOE Award Administrator identified on the Assistance Agreement:

- Summary cost data, for the billing period and cumulative cost data, showing all categories listed in the SF-424A and identifying Federal, non-Federal, and total amounts.
- SF-270.
- If there are unauthorized phases and/or tasks for the current budget period in the NEPA Requirements term in these Special Terms and Conditions, a statement affirming that no invoiced costs are related to tasks or activities prohibited by the NEPA Requirements term.
- *Applicable to for-profit recipients and subrecipients* UCC filing proof for all equipment acquired with project funds (i.e., Federal share or Recipient share) and equipment offered as cost share.

The DOE payment authorizing official may request additional information from the Recipient to support the payment requests prior to release of funds, as deemed necessary. The Recipient is required to comply with these requests. Supporting documents include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the payment requests.

## **Term 36. Budget Changes**

### **A. Budget Changes Generally**

The Contracting Officer has reviewed and approved the SF-424A in Attachment 3 to this Award.

Any increase in the total project cost, whether DOE share or Cost Share, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award, must be approved in advance and in writing by the Contracting Officer.

Any change that alters the program design, project scope, milestones or deliverables requires prior written approval of the Contracting Officer. SCEP may deny reimbursement for any failure to comply with the requirements in this term.

### **B. Transfers of Funds Among Direct Cost Categories**

The Recipient is required to submit written notification via email (not in PAGE) to the Project Officer identified in the Assistance Agreement of any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total project cost, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award.

Upon receipt of adequate notification documentation by the Project Officer, the recipient is hereby authorized to transfer funds among direct cost categories for program activities consistent with their approved State/Annual Plan, without prior approval by the awarding agency.

Limitations on supplies and equipment as detailed in the respective year's SEP Grant Guidance still apply and are not waived under this provision.

**C. Transfer of Funds Between Direct and Indirect Cost Categories**

The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds between direct and indirect cost categories. If the Recipient's actual allowable indirect costs are less than those budgeted in Attachment 3 to this Award, the Recipient may use the difference to pay additional allowable direct costs during the project period so long as the total difference is less than 10% of total project costs and the difference is reflected in actual requests for reimbursement to DOE.

**Term 37. Post-Closeout Management Procedures for Revolving Loan Funds**

**A. Program Income**

Per 2 CFR 200.1, *Program Income* is:

...gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance, except as provided in 2 CFR 200.307(f). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them.

In accordance with this definition, repayments of principal and interest for loans made through this Revolving Loan fund are program income that must be managed in accordance with the procedures outlined in 2 CFR 200.307 for the duration of this grant award.

## **B. Post-closeout treatment of Program Income**

Per the requirements of 2 CFR 200.307(f), program income received after the period of performance (“Post-closeout Program Income”) of the award is not automatically subject to the terms and conditions of the Federal grant; the regulations permit DOE and the recipient to negotiate an agreement to govern the use of those funds. Specifically, the 307(f) notes that: “There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process.”

In accordance with this section, it is DOE’s policy to negotiate a closeout agreement with the recipient of this award as part of the closeout process which will govern the long-term use and management of the program income generated through this award. Upon execution of that agreement, any existing Federal requirements associated with those funds will be terminated and the program income will thereafter be exclusively governed by the terms that are present in the negotiated closeout agreement. Please note that this may include some existing Federal requirements if this award agreement or any of the agency regulations which govern this program specify requirements that must continue to be applied to post-closeout program income, as required by 307(f). As of the execution of this agreement, the following must be carried over into the closeout agreement:

As this award was executed through the State Energy Program, the closeout agreement must include the requirement at 10 C.F.R. 420.18(d), which states: “A State may use regular or revolving loan mechanisms to fund SEP services which are consistent with this subpart and which are included in the State’s approved SEP plan. The State may use loan repayments and any interest on the loan funds only for activities which are consistent with this subpart and which are included in the State’s approved SEP plan.”

Once under the closeout agreement, the State will be able to continue operating the RLF, and will be permitted to make loans through that RLF for any SEP eligible activities, to include the activities authorized under the Energy Efficiency Revolving Loan Fund Capitalization Grant Program and as well as activities authorized in 10 C.F.R. 420. Any requests to expand the range of eligible activities when this RLF is under the cognizance of a negotiated closeout agreement will be rejected.

## **C. Program Income generated during the Period of Performance**

Program income generated during the period of performance (“retained program income”) must be used in accordance with 2 CFR 200.307(e) during the period of performance; generally, this means that the recipient must add the program income to the funds committed to the Award and used to further eligible project objectives. At closeout, this program income will be placed under the cognizance of the closeout agreement without the need for an additional

revolution of the funding. In other words, at closeout, all program income generated during the period of performance will—upon successful negotiation and approval of the closeout agreement—immediately be governed by the terms and conditions of that closeout agreement.

#### **D. Closeout Agreement**

Please note that in addition to the items above which are *required* to be added to the closeout agreement, DOE reserves the right to add any additional terms and conditions that it deems necessary to comply with the requirements of 2 CFR 307 as well as to protect the Federal investment. This may include, but is not limited to:

- Reporting requirements
- Audit and Oversight requirements
- Enforcement requirements; and
- Termination and/or wind-down requirements.

Principally, Recipients should be aware that a violation of the terms of the closeout agreement may result in the funding being returned to the Federal government. Likewise, Recipients who opt to terminate their RLF will be required to return all program income to the Federal government as part of that process. Recipients will be given a copy of the closeout agreement for review no later than 180 days prior to the closeout of this award.

#### **E. Intent to Proceed**

Within 120 days of receipt of the draft closeout agreement, the recipient must communicate to DOE, in writing, its intent to continue operating the RLF under the terms of the closeout agreement after closeout. This communication of intent does not represent acceptance of the terms of the closeout agreement itself. The purpose of the communication of intent is to provide the recipient and DOE with ample time to resolve any potential concerns prior to closeout of this award so that there is no lapse in legal cognizance of these funds prior to the closeout agreement being signed.

### **Subpart C. Miscellaneous Provisions**

#### **Term 38. Reporting Subawards and Executive Compensation**

##### **A. Reporting of first-tier subawards**

- i. *Applicability.* Unless the Recipient is exempt as provided in paragraph D. of this award term, the Recipient must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to an entity (see definitions in paragraph E. of this award term).

ii. *Where and when to report.*

1. The Recipient must report each obligating action described in paragraph A.i. of this award term to <https://www.fsrs.gov>.
2. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported no later than December 31, 2010.)

iii. *What to report.* The Recipient must report the information about each obligating action that the submission instructions posted at <https://www.fsrs.gov> specify.

**B. Reporting Total Compensation of Recipient Executives**

- i. *Applicability and what to report.* The Recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if:
1. The total Federal funding authorized to date under this Award equals or exceeds \$30,000 as defined in 2 CFR 170.320;
  2. In the preceding fiscal year, the Recipient received;
    - a. 80 percent or more of the Recipient's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - b. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards)
  3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).

- ii. *Where and when to report.* The Recipient must report executive total compensation described in paragraph B.i. of this award term:
  1. As part of the Recipient's registration profile at <https://www.sam.gov>.
  2. By the end of the month following the month in which this award is made, and annually thereafter.

### C. Reporting of Total Compensation of Subrecipient Executives

- i. *Applicability and what to report.* Unless the Recipient is exempt as provided in paragraph D. of this award term, for each first-tier subrecipient under this award, the Recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:
  1. In the subrecipient's preceding fiscal year, the subrecipient received:
    - a. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - b. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards)
  2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).
- iii. *Where and when to report.* The Recipient must report executive total compensation described in paragraph B.i. of this award term:
  3. As part of the Recipient's registration profile at <https://www.sam.gov>.
  4. By the end of the month following the month in which this award is made, and annually thereafter.

## D. Reporting of Total Compensation of Subrecipient Executives

- ii. *Applicability and what to report.* Unless the Recipient is exempt as provided in paragraph D. of this award term, for each first-tier subrecipient under this award, the Recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:
  3. In the subrecipient's preceding fiscal year, the subrecipient received:
    - c. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - d. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards)
  4. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).
- iii. *Where and when to report.* The Recipient must report subrecipient executive total compensation described in paragraph C.i. of this award term:
  1. To the recipient.
  2. By the end of the month following the month during which the Recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), the Recipient must report any required compensation information of the subrecipient by November 30 of that year.

## E. Exemptions

If, in the previous tax year, the Recipient had gross income, from all sources, under

\$300,000, it is exempt from the requirements to report:

- i. Subawards; and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

## F. Definitions

For purposes of this Award term:

- i. Entity means all of the following, as defined in 2 CFR Part 25:
  1. A Governmental organization, which is a State, local government, or Indian tribe.
  2. A foreign public entity.
  3. A domestic or foreign nonprofit organization.
  4. A domestic or foreign for-profit organization.
  5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- ii. Executive means officers, managing partners, or any other employees in management positions.
- iii. Subaward:
  1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this award and that the recipient awards to an eligible subrecipient.
  2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients and Contractors* and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).
  3. A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.
- iv. Subrecipient means an entity that:
  1. Receives a subaward from the Recipient under this award; and

2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.
- v. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
1. Salary and bonus.
  2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  5. Above-market earnings on deferred compensation which is not tax-qualified.
  6. Other compensation, if the aggregate value of all such other compensation (*e.g.* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

### **Term 39. System for Award Management and Universal Identifier Requirements**

#### **A. Requirement for Registration in the System for Award Management (SAM)**

Unless the Recipient is exempted from this requirement under 2 CFR 25.110, the Recipient must maintain the currency of its information in SAM until the Recipient submits the final financial report required under this Award or receive the final payment, whichever is later. This requires that the Recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

**B. Unique Entity Identifier (UEI)**

SAM automatically assigns a UEI to all active SAM.gov registered entities. Entities no longer have to go to a third-party website to obtain their identifier. This information is displayed on SAM.gov.

If the Recipient is authorized to make subawards under this Award, the Recipient:

- i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its UEI number to the Recipient.
- ii. May not make a subaward to an entity unless the entity has provided its UEI number to the Recipient.

**C. Definitions**

For purposes of this award term:

- i. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov>).
- ii. Unique Entity Identifier (UEI) is the 12-character, alpha-numeric identifier that will be assigned by SAM.gov upon registration.
- iii. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:
  1. A Governmental organization, which is a State, local government, or Indian Tribe.
  2. A foreign public entity.
  3. A domestic or foreign nonprofit organization.
  4. A domestic or foreign for-profit organization.
  5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- iv. Subaward:
  1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.

2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients and Contractors* and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).
  3. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.
- v. Subrecipient means an entity that:
1. Receives a subaward from the Recipient under this Award; and
  2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

#### **Term 40. Nondisclosure and Confidentiality Agreements Assurances**

- A. By entering into this agreement, the Recipient attests that 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. The Recipient further attests that 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:
- i. *"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."*
  - ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

- iii. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

#### **Term 41. Subrecipient Change Notification**

Except for subrecipients specifically proposed as part of the Recipient's Application for award, the Recipient must notify the Contracting Officer and Project Manager in writing 30 days prior to the execution of new or modified subrecipient agreements, including naming any To Be Determined subrecipients. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR Part 200 as amended by 2 CFR Part 910, nor does it relieve the Recipient from its obligation to comply with applicable federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, the Recipient documentation must, at a minimum, include the following:

- A description of the research to be performed, the service to be provided, or the equipment to be purchased.
- Cost share commitment letter if the subrecipient is providing cost share to the Award.
- An assurance that the process undertaken by the Recipient to solicit the subrecipient complies with their written procurement procedures as outlined in 2 CFR 200.317 through 200.327.
- An assurance that no planned, actual or apparent conflict of interest exists between the Recipient and the selected subrecipient and that the Recipient's written standards of conduct were followed.<sup>[1]</sup>
- A completed Environmental Questionnaire, if applicable.
- An assurance that the subrecipient is not a debarred or suspended entity.

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<sup>[1]</sup> It is DOE's position that the existence of a "covered relationship" as defined in 5 CFR 2635.502(a)&(b) between a member of the Recipient's owners or senior management and a member of a subrecipient's owners or senior management creates at a minimum an apparent conflict of interest that would require the Recipient to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the subrecipient agreement does not create an actual conflict of interest. The Recipient must also notify the Contracting Officer of any new subrecipient agreement with: (1) an entity that is owned or otherwise controlled by the Recipient; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient, as it is DOE's position that these situations also create at a minimum an apparent conflict of interest.

- An assurance that all required award provisions will be flowed down in the resulting subrecipient agreement.

The Recipient is responsible for making a final determination to award or modify subrecipient agreements under this agreement, but the Recipient may not proceed with the subrecipient agreement until the Contracting Officer determines, and provides the Recipient written notification, that the information provided is adequate.

Should the Recipient not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the subrecipient documentation stipulated above, the Recipient may proceed to award or modify the proposed subrecipient agreement.

#### **Term 42. Conference Spending**

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

#### **Term 43. Recipient Integrity and Performance Matters**

##### **A. General Reporting Requirement**

If the total value of the Recipient's currently active Financial Assistance awards, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this term. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

##### **B. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

- i. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five-year period; and
- iii. Is one of the following:
  1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
  2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  3. An administrative proceeding, as defined in paragraph E of this term, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  4. Any other criminal, civil, or administrative proceeding if:
    - a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
    - b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - c. The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.

**C. Reporting Procedures**

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this term. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

**D. Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph A of this term, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than \$10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

## E. Definitions

For purposes of this term:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- ii. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- iii. Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—
  1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

### **Term 44. Export Control**

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. 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.” The Recipient is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under a resulting award.

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

### **Term 45. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

As set forth in 2 CFR 200.116, recipients and subrecipients are prohibited from obligating or expending project funds (Federal funds and recipient cost share) to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See Public Law 115-232, section 889 for additional information.

#### **Term 46. Fraud, Waste and Abuse**

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE'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 Department of Energy 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 [IG Hotline | Department of Energy](#).

Additionally, the Recipient must be cognizant of the requirements of 2 CFR 200.113 Mandatory disclosures, which states:

The non-Federal entity or applicant for a federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can

result in any of the remedies described in 200.339. (See also 2 CFR part 180, 31 U.S.C. § 3321, and 41 U.S.C. § 2313.)

#### **Term 47. Interim Conflict of Interest Policy for Financial Assistance Policy**

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/pf-2022-17-department-energy-interim-conflict-interest-policy-requirements-financial>. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under the DOE financial assistance award.

Recipients must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities.

It is understood that non-Federal entities and individuals receiving DOE financial assistance awards will need sufficient time to come into full compliance with DOE's interim COI Policy. To provide some flexibility, SCEP allows for a staggered implementation. Specifically, prior to award, the Recipient 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 any unmanaged/ unmanageable FCOIs.

To further ease the administrative burden, SCEP established a model conflict of interest policy that SCEP Recipients may adopt and implement. The Recipients has 180 days from the date of this Award to either adopt and implement the SCEP model conflict of interest policy or ensure its existing conflict of interest policy aligns with the requirements of the SCEP model COI policy. The SCEP model COI Policy is available upon request from the Contracting Officer.

#### **Term 48. Organizational Conflict of Interest**

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Recipient is unable or appears to be unable to be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)).

The Recipient must disclose in writing any potential or actual organizational conflict of interest to the DOE Contracting Officer. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included the disclosure, see Section VI. of the DOE interim Conflict of Interest Policy for Financial Assistance at <https://www.energy.gov/management/departement-energy-interim-conflict-interest-policy-requirements-financial-assistance>.

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds. Otherwise, DOE may terminate the Award in accordance with 2 CFR 200.340 unless continued performance is determined to be in the best interest of the federal government.

The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-federal entities, with the exception of DOE National Laboratories. The Recipient is responsible for ensuring subrecipient compliance with this term.

If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.

#### **Term 49. Participants and Other Collaborating Organizations**

Prior to award, the Recipient was required to provide the following information on participants and other collaborating organizations. If there are any changes to Participants and Collaborating Organizations information previously submitted to DOE, the Recipient must submit updated information within thirty (30) calendar days after the end of the quarterly reporting period in which the change occurred:

##### **A. What individuals have worked on the project**

Provide the following information for individuals at the prime recipient and subrecipient level: (1) all senior and key personnel; and (2) each person who has worked or is expected to work at least one person month per year on the project regardless of the source of compensation (a person month equals approximately 160 hours of effort).

- i. Name
- ii. Organization
- iii. Job Title
- iv. Role in the project
- v. Start and end date (month and year) working on the project
- vi. State, U.S. territory, and/or country of residence
- vii. Whether this person collaborated with an individual or entity located in a foreign country in connection with the scope of this Award, and
- viii. If yes to vii, whether the person traveled to the foreign country as part of that collaboration, and, if so, where and what the duration of stay was.

##### **B. Organizations**

Identify all subrecipients, contractors, U.S. National Laboratories, partners, and collaborating organizations. Recipients must also include all foreign collaborators as outlined in the Foreign Collaboration Considerations term of the award Terms and

Conditions. For each, provide name, UEI, zip code or latitude/longitude, role in the project, contribution to the project, and start and end date.

### **Term 50. Human Subjects Research**

Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (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*.

Federal regulation and the DOE Order require review by an Institutional Review Board (IRB) of all proposed human subjects research projects. The IRB is an interdisciplinary ethics board responsible for ensuring that the proposed research is sound and justifies the use of human subjects or their data; the potential risks to human subjects have been minimized; participation is voluntary; and clear and accurate information about the study, the benefits and risks of participating, and how individuals' data/specimens will be protected/used, is provided to potential participants for their use in determining whether or not to participate.

The Recipient shall provide the Federal Wide Assurance number identified in item 1 below and the certification identified in item 2 below to DOE prior to initiation of any project that will involve interactions with humans in some way (e.g., through surveys); analysis of their identifiable data (e.g., demographic data and energy use over time); asking individuals to test devices, products, or materials developed through research; and/or testing of commercially available devices in buildings/homes in which humans will be present. *Note:* This list of examples is illustrative and not all inclusive.

No DOE funded research activity involving human subjects, biospecimens, or identifiable private information shall be conducted without:

- 1) A registration and a Federal Wide Assurance of compliance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services; and
- 2) Certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance. IRB review may be accomplished by the awardee's institutional IRB; by the Central DOE IRB; or if collaborating with one of the DOE national laboratories, by the DOE national laboratory IRB.

The Recipient is responsible for ensuring all subrecipients comply and for reporting information on the project annually to the DOE Human Subjects Research Database (HSRD) at <https://science.osti.gov/HumanSubjects/Human-Subjects-Database/home>. *Note:* If a DOE IRB is used, no end of year reporting will be needed.

Additional information on the DOE Human Subjects Research Program can be found at:  
<https://science.osti.gov/ber/human-subjects>.

### **Term 51. Affirmative Action and Pay Transparency Requirements**

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

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

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors, and subcontractors must take. See OFCCP's Technical Assistance Guide at:  
<https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec>.

### **Term 52. Potentially Duplicative Funding Notice**

If the Recipient or subrecipients have or receive any other award of federal funds for activities that potentially overlap with the activities funded under this Award, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal 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 this Award. If there are identical cost items, the Recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

## **Subpart D. Bipartisan Infrastructure Law (BIL)-specific requirements**

### **Term 53. Recipient Notification of prospective BIL- specific requirements**

The funding for this Award is made available under the BIL and is subject to the applicable requirements included in the BIL. Requirements for this Award are listed in the subsequent

award terms, however the Recipient should be aware that additional terms and modifications may be included when the Award is modified with the incorporation of the Full Application.

Additional terms that may be incorporated include, but are not limited to:

1. Publication of Information on the Internet
2. Certification and Registration
3. Whistleblowers and False Claims

#### **Term 54. Reporting Tracking and Segregation of Incurred Costs**

BIL funds may be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL.

#### **Term 55. Buy American Requirements for Infrastructure Projects**

##### *A. Definitions*

**Components** See 2 CFR 184.3 “Definitions.”

**Construction Materials** See 2 CFR 184.3 “Definitions.”

**Domestic Content Procurement Preference Requirement or Buy America 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—

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

**Infrastructure** See 2 CFR 184.4 (c) and (d).

**Manufactured Products** See 2 CFR 184.3 “Definitions.”

**Predominantly of iron or steel** 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 infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement

None of the funds provided under this award (federal share or 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 materials 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 permanently affixed to the infrastructure in the project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a 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) of the BABA states that “construction materials” do not include cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. 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, when certain Section 70917(c) materials (such as stone, sand, and gravel) are used to produce a manufactured product, such as is precast concrete processed into a specific shape or form, and is in such state when brought to the work site, then that product is subject to the BABA requirements.

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.

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

### C. Certification of Compliance

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

Recipients must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States.

The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all 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.

#### D. Waivers

When necessary, recipients may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the CO. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. Unreasonable Cost- 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.

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

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential the project;

- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver.
- This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation;
- 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.

DOE may request, and the recipient must provide, additional information for consideration of this 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. Waiver requests may take up to 90 calendar days to process.

## **Term 56. Davis Bacon Requirements**

For more information see [Davis-Bacon Act Requirements for Recipients of Bipartisan Infrastructure Law Funding | Department of Energy](#). This Award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2,000 on an award funded directly by or assisted in whole or in part by funds made available under this Award 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).

Recipients shall provide written assurance acknowledging the DBA requirements for the Award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 on projects funded directly by or assisted in whole or in part by and through funding under the Award 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).

The Recipient must comply with all Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.

- (2) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- (5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.
- (6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.
- (7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.
- (8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.
- (9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor 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>.

The Department of Energy has contracted with LCPTracker, a third-party DBA electronic payroll compliance software application. The Recipient must ensure the timely electronic submission of

weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software. For more information see [Davis-Bacon Act Requirements for Recipients of Bipartisan Infrastructure Law Funding | Department of Energy](#)

#### **Davis Bacon Act Electronic Certified Payroll Submission Waiver**

Recipients may request a waiver if they are unable or limited in their ability to use or access LCPtracker (e.g., rural and remote recipients with limited broadband access). A waiver must be granted before the Award starts. The applicant does not have the right to appeal DOE's decision concerning a waiver request.

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

The Appendix A Wage Determination is provided as an Attachment to the recipient.

#### **Term 57. Signage**

The Recipient is encouraged to display DOE standard infrastructure investment signage, available for download from DOE (<https://www.energy.gov/branding>), during construction of the project. Expenditures for such signage shall be a permitted eligible cost of the project.

#### **Term 58. Cybersecurity Plan**

The Secretary of Energy, per BIL Section 40126, designated the DOE's Office of Cybersecurity, Energy Security, and Emergency Response (CESER) as responsible for coordinating cybersecurity project plans for IJA provisions the Secretary deemed to have a cyber risk. CESER coordinates with DOE National Laboratory Subject Matter Experts (SMEs) to provide project lifecycle support activities that maintain or improve the project cybersecurity over its lifecycle.

The Recipient is responsible for maintaining and improving project cybersecurity throughout the period of performance, including responding to DOE feedback on the plans and the associated milestones, deliverables, including attending associated cybersecurity plan lifecycle support meeting dates with CESER and DOE SMEs. Any revisions to the cybersecurity plans and all related deliverables shall be emailed securely to [CR-IIJACybersecurityplans@hq.doe.gov](mailto:IIJACybersecurityplans@hq.doe.gov).

Any DOE and/or National Laboratory review comments or feedback provided to Recipients does not constitute an endorsement or approval of any specific elements within the cybersecurity plan or the proposed security approach. Therefore, such feedback should not be referenced or used in marketing or promotional materials. All cybersecurity plans and deliverables are exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552) pursuant to Section

40126(e). This exemption is limited to information provided to or collected by the federal government described in Pub. L. 117-58 § 41026, 42 U.S.C. § 18725.

**Term 59. Timeframe for Use of Capitalization Grant**

Per BIL Section 40502(d)(2), a state must begin using a capitalization grant not more than 180 days after the date on which the grant is received. While a state does not have to make a loan within 180 days, it must have loans available (i.e., be prepared to start accepting and processing applications) or issue a grant within the first 180 days of award. If your state has special circumstances that preclude it from meeting the 180-day deadline described above, please contact your Project Officer to discuss options for moving forward with your award.