

Formal Request for Proposals

TITLE OF RFP:	Energy Efficiency Revolving Loan Fund (EERLF) Partner		
State Agency:	Iowa Economic Development Authority (IEDA or Authority)		
State seeks to purchase:	IEDA seeks to hire a contractor to assist in the marketing, program administration, and U.S. Department of Energy (DOE) due diligence compliance necessary for establishing and delivering the new EERLF.		
Initial term of the contract:	2 years	Possible extensions: 1	max 3 years (total)
Anticipated Contract term - Beginning:	December 1, 2024	Ending:	November 30, 2026
State Issuing Officer:	Lisa Connell		
Email:	lisa.connell@iowaeda.com		
Address:	1963 Bell Ave, Suite 200, Des Moines, IA 50315		
PROCUREMENT TIMETABLE—Event or Action:		Date/Time (Central Time Zone):	
State Posts Notice of RFP on TSB website:		September 12, 2024	
State Issues RFP:		September 16, 2024	
Questions Due:		September 26, 2024 / 4:00 PM Local time Des Moines, IA	
Authority Response to Questions on or before		October 1, 2024 / 4:00 PM Local time Des Moines, IA	
Proposals Due Date:		October 11, 2024 / 4:00 PM Local time Des Moines, IA	
Anticipated Date to issue Notice of Intent to Award:		November 14, 2024	
Anticipated Date to execute contract:		December 1, 2024	
Addenda to this RFP will be posted in the Iowa Management of Procurement and Contracts System (IMPACS)			
Proposals Required to be Submitted in IMPACS .			
Firm Proposal Terms - Per Section 3.2.13, the minimum Number of Days following the deadline for submitting proposals that the Contractor guarantees all proposal terms, including price, will remain firm:			120

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SECTION 1: INTRODUCTION

1.1. Purpose. The purpose of this Request for Proposals (RFP) is to solicit proposals from Responsible Contractors to provide the services identified on the RFP cover sheet and further described in Section 2 of this RFP to the Authority. The Authority intends to award a Contract(s) beginning on the date listed on the RFP cover sheet, and the Authority, in its sole discretion, may extend the Contract for up to the number of extensions identified on the RFP cover sheet. The Authority may award more than one Contractor under this RFP.

1.2. Definitions. For the purposes of this RFP and the resulting contract, the following terms shall mean:

1.2.1. "Authority" means the Iowa Economic Development Authority and any other governmental body that purchases from the Contract; may also be referred to as, "IEDA", "State Agency", "Department" or "Authority".

1.2.2. "Proposal" means the Contractor's proposal submitted in response to the RFP.

1.2.3. "Contract" means the contract(s) entered into with the successful Contractor(s) as described in Section 6.1.

1.2.4. "Contractor" or "Bidder" means a vendor submitting Proposals in response to this RFP.

1.2.5. "Responsible Contractor" means a Contractor that has the capability in all respects to perform the requirements of the Contract. In determining whether a Contractor is a Responsible Contractor, the Authority will consider various factors including, but not limited to, the Contractor's competence and qualifications to provide the goods or services requested, the Contractor's integrity and reliability, the past performance of the Contractor and the best interest of the Authority and the State.

1.2.6. "Responsive Proposal" means a Proposal that complies with the material provisions of this RFP.

1.2.7. "RFP" means this Request for Proposals and any attachments, exhibits, schedules or addenda hereto.

1.2.8. "State" means the State of Iowa, the Authority, and all state agencies, boards, and commissions, and any political subdivisions making purchases from the Contract as permitted by this RFP.

1.3. Overview of the RFP Process. **Contractors will be required to submit their Proposals electronically in [IMPACS](#).** It is the Authority's intention to evaluate Proposals from all Responsible Contractors that submit timely Responsive Proposals and award the Contract(s) in accordance with Section 4, Evaluation and Selection.

1.4. Background Information. This RFP is designed to provide Contractors with the information necessary for the preparation of competitive Proposals. The RFP process is for the Authority's

benefit and is intended to provide the Authority with competitive information to assist in the selection process. It is not intended to be comprehensive. Each Contractor is responsible for determining all factors necessary for submission of a comprehensive Proposal.

Iowa Economic Development Authority

Our mission is to strengthen economic and community vitality by building partnerships and leveraging resources to make Iowa the choice for people and business. For more information about IEDA and its programs, visit IEDA's Web site at www.iowaeda.com.

As the designated State Energy Office, IEDA's energy division receives State Energy Program Formula funding from the U.S. Department of Energy to carry out designated energy activities for the state. These activities include promoting energy efficiency, biofuels and renewable energy. In addition, the energy team administers several programs that can be found on IEDA's [web site](#).

Program Background/Description

The Energy Efficiency Revolving Loan Fund Capitalization Grant Program was established by the Infrastructure Investment and Jobs Act. Each state is allocated funds via a formula. Priority states, including Iowa, receive additional funds based on per capita energy consumption data. Iowa's allocation consists of approximately \$7 million that will be utilized to establish, operate, and fund a new revolving loan fund that will enable energy efficiency improvements in publicly- and privately-owned commercial buildings located in the State that have been identified through a mandatory energy audit.

Businesses and organizations that own or operate commercial buildings/structures are eligible for loans through the fund (includes publicly and privately owned buildings). If the borrower is a business, they must satisfy both of the following:

- Conducts a majority of its business in Iowa.
- Owns or operates one or more commercial buildings or commercial space within a building that serves multiple functions, such as a building for commercial and residential operations.

Eligible projects must be life-cycle cost-effective and must address at least one of the following: the energy efficiency of the building or facility; the physical comfort of the building or facility occupants; or the quality of the air in the building or facility. Each upgrade or retrofit must be recommended in a qualifying energy audit. Based on these criteria, certain renewable energy systems may be eligible for inclusion in a qualifying project. The project must lead to one of the following outcomes: reduce the energy intensity of the building or facility or improve the control and management of energy use of the building or facility to reduce demand during peak times.

Each eligible project must have an energy audit completed for the project, which shall:

- determine the overall consumption of energy of the facility of the eligible recipient.
- identify and recommend lifecycle cost-effective opportunities to reduce the energy consumption of the facility of the eligible recipient.
- identify the period and level of peak energy demand for each building within the facility of the eligible recipient and the sources of energy consumption that are contributing the most to that period of peak energy demand.
- recommend controls and management systems to reduce or redistribute peak energy consumption.

- estimate the total energy and cost savings potential for the facility of the eligible recipient if all recommended upgrades and retrofits are implemented, using Audit Template, or such other audit software approved by DOE which complies with the BuildingSync data format.

The EERLF budget includes funds that can be allocated as grants to cover the cost of the mandatory building energy audit for eligible applicants. A business seeking grant funds must meet both criteria to receive a loan (see above) and have fewer than 500 employees. Once these funds are exhausted, building owners will be responsible for paying the cost of energy audits, and the borrower may include this cost in the EERLF loan amount.

SECTION 2: SPECIFICATIONS

2.1 Overview. The successful Contractor shall provide the services to the Authority and other agencies using the Contract in accordance with the specifications as provided in this Section.

2.2 Proposed Scope of Work and Deliverables. Deliverables listed are the minimum expected from the Contractor. Additional information and deliverables based on Contractor's experience with similar projects are encouraged.

The required scope of the services are listed below. The Contractor that can provide these services will work in coordination with the IEDA and the Iowa Finance Authority (IFA) to manage and operate the EERLF. The IEDA will administer the program funds and provide oversight. IFA will be responsible for underwriting the loan during the review of the EERLF application and servicing loan payments received from borrowers.

The Contractor that is awarded this contract will:

- 1) Assist applicants with the application process. IEDA will make a loan application available through the iowagrants.gov portal.
- 2) Assess eligibility of applicants and projects and make recommendations to IEDA.
- 3) Conduct state-wide, targeted marketing and outreach to commercial entities as approved by IEDA. Low to moderate income multi-family housing is a primary focus of the program. Preference should be given to buildings with existing audits, which can be used to screen potential loan applicants. Contractor will coordinate with IEDA and IFA to process potential loan applicants and applications.
- 4) Coordinate and/or conduct the required energy audits using energy audit software approved by DOE as specified in Attachment 4.
- 5) Based on energy audit findings and recommendations, serve as the technical resource to IEDA and/or building owners during the execution of energy upgrades or retrofit projects and ensure work is performed in accordance with DOE guidelines.
- 6) Submit all required quarterly and annual reporting metrics to the IEDA (See Attachment 5).
- 7) Oversee compliance with federal requirements, as applicable, including, but not limited Build America, Buy America (BABA); National Environmental Policy Act (NEPA); and National Historic Preservation Act (NHPA). The Contractor will also oversee Davis-Bacon Act compliance by ensuring payroll certifications are uploaded to the appropriate federal LCPTTracker [portal](#) in the required timeframe (See Attachment 6). With BABA only applying to public projects/buildings and NEPA compliance expected to be minimal due to the focus on retrofits and upgrades, regarding time allocation, it is expected that Davis-Bacon will account for a majority of the compliance-related requirements. The Contractor will assist IEDA with LCPTTracker registration and initial setup/configuration;

complete required training sessions for services to be performed by Contractor; setup project records in LCPTracker for each EERLF loan and coordinate with the project contractor/subcontractors for LCPTracker registration/setup/training; review and approve certified payroll reports on IEDA's behalf in LCPTracker; and prepare for IEDA's submission the semi-annual DBA Compliance report to DOE due by April 21 and October 21 of each year.

- 8) Conduct at least one on-site inspection during the construction phase of each funded project.

The newly established EERLF must be able to accept applications or issue a grant to complete an audit no later than July 31, 2025.

DOE has authorized the program through July 31, 2029, and then provides a close-out agreement process for use of remaining funds. IEDA may enter an additional contract or contracts with the selected Contractor to continue services until funds are fully utilized.

Contractor should separately track and report project expenses by task.

SECTION 3: FORM AND CONTENT OF PROPOSALS

3.1. Instructions. These instructions prescribe the format and content of the Proposal. They are designed to facilitate a uniform review process. Failure to adhere to the Proposal format may result in the rejection of the Proposal.

3.1.1. The Proposal shall be submitted timely to in [IMPACS](#). Proposals submitted by other means will be rejected by the Authority.

The Authority shall not be responsible for misdirected messages or premature opening of Proposals if a Proposal is not properly submitted.

3.1.2. If the Contractor designates any information in its Proposal as confidential pursuant to Section 5, the Contractor must also submit one (1) copy of the Proposal from which confidential information has been excised as provided in Section 5 and which is marked "Public Copy".

3.1.3. Proposals shall not contain promotional or display materials.

3.1.4. Attachments shall be referenced in the Proposal.

3.1.5. If a Contractor proposes more than one solution to the RFP requirements, each shall be labeled and submitted separately, and each will be evaluated separately.

3.2 Technical Proposal. The following documents and responses shall be included in the Technical Proposal in the order given below:

3.2.1 Transmittal Letter (Required)

An individual authorized to legally bind the Contractor shall sign the transmittal letter. The letter shall include the Contractor's mailing address, electronic mail address, and telephone number. Any request for confidential treatment of information shall be included in the transmittal letter in accordance with the provisions of Section 5.

3.2.2 Table of Contents. The Contractor shall include a table of contents of its Proposal.

3.2.3 Executive Summary. The Contractor shall prepare an executive summary and overview of the services it is offering, including all the following information:

3.2.3.1 Statements that demonstrate that the Contractor has read, understands and agrees with the terms and conditions of the RFP including the contract provisions in Section 6.

3.2.3.2 An overview of the Contractor's plans for complying with the requirements of this RFP.

3.2.3.3 Any other summary information the Contractor deems to be pertinent.

3.2.4 Specifications. The Contractor shall answer whether or not it will comply with each requirement in Section 2 of the RFP and explain the process and methodology it intends to utilize to address the topics identified in Section 2 and any additional topics that the Authority considers to be relevant to the RFP. Where the context requires more than a yes or no answer or the specific requirement so indicates, Contractor shall explain how it will comply with the requirement. Merely repeating the Section 2 requirements may be considered non-responsive and result in the rejection of the Proposal. Proposals must identify any deviations from the requirements of the RFP or requirements the Contractor cannot satisfy. If the Contractor deviates from or cannot satisfy the requirement(s) of this section, the Authority may reject the Proposal.

3.2.5 Vendor Background Information. The Contractor shall provide the following general background information:

3.2.5.1 Name, address, telephone number, and e-mail address of the Contractor including all d/b/a's or assumed names or other operating names of the Contractor and any local addresses and phone numbers.

3.2.5.2 Form of business entity, i.e., corporation, partnership, proprietorship, limited liability company.

3.2.5.3 State of incorporation, state of formation, or state of organization.

3.2.5.4 The location(s) including address and telephone numbers of the offices and other facilities that relate to the Contractor's performance under the terms of this RFP.

3.2.5.5 Number of employees.

3.2.5.6 Type of business and Unique Entity Identifying (UEI) number if available.

3.2.5.7 Name, address and telephone number of the Contractor's representative to contact regarding all contractual and technical matters concerning the Proposal.

3.2.5.8 Name, contact information and qualifications of any subcontractors who will be involved with this project the Contractor proposes to use and the nature of the services the subcontractor would perform.

3.2.5.9 The successful Contractor will be required to register to do business in Iowa before payments can be made. In addition, if federal funds are utilized to fund this RFP then the successful Contractor is required to obtain a UEI number.

3.2.6 Experience. The Contractor must provide the following information regarding its experience:

3.2.6.1 Number of years in business.

3.2.6.2 Number of years of experience with providing the types of services sought by the RFP.

3.2.6.3 The level of technical experience in providing the types of services sought by the RFP, including experience, training, and/or certifications for carrying out energy audits.

3.2.6.4 A list of all services similar to those sought by this RFP that the Contractor has provided to other businesses or governmental entities.

3.2.6.5 Letters of reference from at least one (1) customer or client knowledgeable of the Contractor's performance in providing services similar to the services described in this RFP and a contact person and telephone number for each reference.

3.2.7 Personnel. The Contractor must provide resumes for all key personnel who will be involved in providing the services contemplated by this RFP. The following information must be included in the resumes:

3.2.7.1 Full name.

3.2.7.2 Education.

3.2.7.3 Years of experience and employment history particularly as it relates to the requirements of the RFP.

3.2.8 Financial Information. The Contractor must provide the following financial information

3.2.8.1 Audited financial statements for the last 3 years.

3.2.8.2 At least two (2) financial references, if audited financial statements are unavailable. Examples of financial references would include banks, vendors that state the Contractor has paid bills on time, or others who can verify the financial viability of the Contractor. The references can be in letter format and describe any information relevant to the Contractor's finances.

3.2.9 Termination, Litigation, Debarment. The Contractor must provide the following information for the past five (5) years:

3.2.9.1 Has the Contractor had a contract for services terminated for any reason? If so, provide full details regarding the termination.

3.2.9.2 Describe any damages or penalties assessed against or dispute resolution settlements entered into by Contractor under any existing or past contracts for services. Provide full details regarding the circumstances, including dollar amount of damages, penalties and settlement payments.

3.2.9.3 Describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Contractor to engage in any business, practice or activity.

3.2.9.4 A list and summary of all litigation or threatened litigation, administrative or regulatory proceedings, or similar matters to which the Contractor or its officers have been a party.

3.2.9.5 Any irregularities discovered in any of the accounts maintained by the Contractor on behalf of others. Describe the circumstances and disposition of the irregularities.

Failure to disclose these matters may result in rejection of the Proposal or termination of any subsequent Contract. The above disclosures are a continuing requirement of the Contractor. Contractor shall provide written notification to the Authority of any such matter commencing or occurring after submission of a Proposal, and with respect to the successful Contractor, following execution of the Contract.

3.2.10 Acceptance of Terms and Conditions. The Contractor shall specifically agree that by submitting the Proposal, the Contractor is accepting all terms and conditions stated in the RFP. However, if the Contractor objects to any term or condition, the Contractor must specifically refer to the RFP page and section number and provide the reason for the objection. Objections or responses that materially alter the RFP will be deemed non-responsive and result in rejection of the Proposal.

3.2.11 Certification Letter. The Contractor shall sign and submit with the Proposal, the document included as Attachment #1 (Certification Letter) in which the Contractor shall make the certifications included in Attachment #1.

3.2.12 Authorization to Release Information. The Contractor shall sign and submit with the Proposal the document included as Attachment #2 (Authorization to Release Information Letter) in which the Contractor authorizes the release of information to the Authority.

3.2.13 Firm Proposal Terms. The Contractor shall guarantee in writing the services offered in the Proposal are currently available and that all Proposal terms, including price, will remain firm 120 days following the deadline for submitting Proposals.

3.3 Cost Proposal. The Contractor shall provide its cost proposal separately for the proposed services using the form in Attachment #3.

3.4 Contractor shall certify it can comply with applicable information security policies. State of Iowa Security Standards can be found at: <https://ocio.iowa.gov/standards> under the Security section.

SECTION 4: EVALUATION AND SELECTION

4.1 Introduction. This section describes the evaluation process that will be used to determine which Proposal(s) provide(s) the greatest benefit to the State. The Authority will not necessarily award the Contract(s) to the Contractor(s) offering the lowest cost to the Authority. Instead, the Authority will award the Contract(s) whose Responsive Proposal(s) the Authority believes will provide the best value to the State. The Authority will either choose to award one contract for all scope of work & deliverables described in Section 2 or choose to award multiple contracts, whichever the Authority determines is in the best interests of the Authority. The Authority reserves the right to reject all proposals and choose not to issue an award(s).

4.2 Evaluation Committee. The Authority intends to conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. The Authority will use an evaluation committee to review and evaluate the Proposals. Approval of the Authority board may be required.

4.3 Overview of Evaluation. All Technical Proposals will be first evaluated to determine if they comply with the requirements provided in Section 2. The evaluation committee will fully evaluate and score all Responsive Proposals submitted by Responsible Contractors in accordance with this Section.

4.4 Evaluation Criteria. Evaluation of Proposals will be based on the following criteria, which are not listed in any particular order of importance.

4.4.1 Demonstrated ability to enhance and/or expand the effectiveness of the Authority, as described in this RFP.

4.4.2 Cost of services.

4.4.3 Satisfactory performance on previous and present contracts similar in scope and with similar clients to the subject of this RFP.

4.4.4 Contractor's and subcontractor's (if any) professional experience and performance record.

4.4.5 Financial stability of Contractor.

4.4.6 Overall track record and reputation in the relevant industry.

4.4.7 Compliance with RFP and contract terms and conditions and Proposal format.

4.4.8 Contractor's proposed work plans.

4.4.9 Demonstrated quality of proposed services.

4.4.10 Plans for assurance of high-quality service.

4.4.11 Ability to integrate with Authority administrative applications.

SECTION 5: ADMINISTRATIVE INFORMATION

5.1 Issuing Officer. The Issuing Officer identified in the RFP cover sheet is the sole point of contact regarding the RFP from the date of issuance until a Notice of Intent to Award the Contract is issued.

5.2 Restriction on Communication. From the issue date of this RFP until a Notice of Intent to Award the Contract is issued, Contractors will contact only the Issuing Officer. The Issuing Officer will respond only to written questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted as provided in Section 5. Oral questions related to the interpretation of this RFP will not be accepted. Contractors may be disqualified if they contact any State employee other than the Issuing Officer about the RFP except that Contractors may contact Kym Stevenson at 515.348.6193 or tsbcert@iowaeda.com on issues related to the preference for Targeted Small Businesses.

5.3 Downloading the RFP from the Internet. The RFP and any addenda to the RFP will be posted in IMPACS. The Contractor is advised to check periodically for Addenda to this RFP, particularly if the Contractor downloaded the RFP from the Internet as the Contractor may not automatically receive addenda. It is the Contractor's sole responsibility to check as frequently as the Contractor deems prudent for addenda to posted documents.

5.4 Procurement Timetable. The dates provided in the procurement timetable on the RFP cover sheet are provided for informational and planning purposes. The Authority reserves the right to change the dates. If the Authority changes any of the deadlines for Contractor submissions, the Authority will issue an addendum to the RFP.

5.5 Questions, Requests for Clarification, and Suggested Changes. Contractors are invited to submit written questions and requests for clarifications regarding the RFP in IMPACS. Contractors may also submit suggestions for changes to the requirements of this RFP. The questions, requests for clarifications, or suggestions must be in writing and received by the Issuing Officer before the date and time listed on the RFP cover sheet. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, Contractor shall reference the page and section number(s). The Authority will provide written responses in IMPACS to questions, requests for clarifications, or suggestions will be received from Contractors on or before the date listed on the RFP cover sheet. The Authority's written responses will become an addendum to the RFP. If the Authority decides to adopt a suggestion that modifies the RFP, the Authority will issue an addendum to the RFP.

The Authority assumes no responsibility for oral representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP through an addendum.

5.6 Amendment to the RFP. The Authority reserves the right to amend the RFP at any time using an addendum. The Contractor shall acknowledge receipt of all addenda in its Proposal. If the Authority issues an addendum after the due date for receipt of Proposals, the Authority may, in its sole discretion, allow Contractors to amend their Proposals in response to the addendum.

5.7 Amendment and Withdrawal of Proposal. The Contractor may amend or withdraw and resubmit its Proposal at any time before the Proposals are due. The amendment must be in writing and signed by the Contractor. The amendment must be submitted in IMPACS and received by the time set for the receipt of Proposals. Contractors must notify the Issuing Officer in writing prior to the due date for Proposals if they wish to completely withdraw their Proposals.

5.8 Submission of Proposals. The Authority must receive the Proposal as identified on the RFP cover sheet before the "Proposals Due" date listed on the RFP cover sheet. **This is a mandatory requirement and will not be waived by the Authority. Any Proposal received after this deadline will be rejected.** It is the Contractor's responsibility to ensure that the Proposal is received prior to the deadline. The Authority has no obligation to confirm receipt.

Contractors must furnish all information necessary to enable the Authority to evaluate the Proposal. Proposals that fail to meet the mandatory requirements of the RFP will be rejected. Oral information provided by the Contractor shall not be considered part of the Contractor's Proposal unless it is reduced to writing.

5.9 Proposal Opening. The Authority will open Proposals after the deadline for submission of Proposals has passed. The Proposals will remain confidential until the Evaluation Committee has reviewed all the Proposals submitted in response to this RFP and the Authority has issued a Notice of Intent to Award a Contract. See Iowa Code Section 72.3. However, the names of Contractors who submitted timely Proposals will be publicly available after the Proposal opening. The announcement of Contractors who timely submitted Proposals does not mean that an individual Proposal has been deemed technically compliant or accepted for evaluation.

5.10 Costs of Preparing the Proposal. The costs of preparation and delivery of the Proposal are solely the responsibility of the Contractor.

5.11 No commitment to Contract. The Authority reserves the right to reject any or all Proposals received in response to this RFP at any time prior to the execution of the Contract. Issuance of this RFP in no way constitutes a commitment by the Authority to award a contract.

5.12 Rejection of Proposals. The Authority may reject outright and not evaluate a Proposal for reasons including without limitation:

5.12.1 The Authority determines there is no longer a need to procure the services.

5.12.2 The Contractor fails to deliver the cost proposal as a separate document.

5.12.3 The Contractor acknowledges that a mandatory requirement of the RFP cannot be met.

5.12.4 The Contractor's Proposal changes a material requirement of the RFP or the Proposal is not compliant with the mandatory requirements of the RFP.

5.12.5 The Contractor's Proposal limits the rights of the Authority.

5.12.6 The Contractor fails to include information necessary to substantiate that it will be able to meet a requirement of the RFP as provided in Section 3 of this RFP.

5.12.7 The Contractor fails to timely respond to the Authority's request for information, documents, or references.

5.12.8 The Contractor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee as provided in Section 3 of this RFP.

5.12.9 The Contractor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP or otherwise fails to comply with the requirements of this RFP.

5.12.10 The Contractor initiates unauthorized contact regarding the RFP with state employees.

5.12.11 The Contractor provides misleading or inaccurate responses.

5.12.12 The Contractor's Proposal is materially unbalanced.

5.12.13 There is insufficient evidence (including evidence submitted by the Contractor and evidence obtained by the Authority from other sources) to satisfy the Authority that the Contractor is a Responsive Contractor.

5.12.14 The Contractor alters the language in Attachment 1, Certification Letter or Attachment 2, Authorization to Release Information letter.

5.13 Nonmaterial Variances. The Authority reserves the right to waive or permit cure of nonmaterial variances in the Proposal if, in the judgment of the Authority, it is in the State's best interest to do so. Nonmaterial variances include but are not limited to: minor failures to comply that do not affect overall responsiveness, that are merely a matter of form or format, that do not change the relative standing or otherwise prejudice other Contractors, that do not change the meaning or scope of the RFP, or that do not reflect a material change in the requirements of the RFP. In the event the Authority waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the Contractor from full compliance with RFP specifications or other Contract requirements if the Contractor is awarded the Contract. The determination of materiality is in the sole discretion of the Authority.

5.14 Reference Checks. The Authority reserves the right to contact any reference to assist in the evaluation of the Proposal, to verify information contained in the Proposal and to discuss the Contractor's qualifications and the qualifications of any subcontractor identified in the Proposal.

5.15 Information from Other Sources. The Authority reserves the right to obtain and consider information from other sources concerning a Contractor, such as the Contractor's capability and performance under other contracts, the qualifications of any subcontractor identified in the Proposal, the Contractor's financial stability, past or pending litigation, and other publicly available information.

5.16 Verification of Proposal Contents. The content of a Proposal submitted by a Contractor is subject to verification. If the Authority determines in its sole discretion that the content is in any way misleading or inaccurate, the Authority may reject the Proposal.

5.17 Proposal Clarification Process. The Authority reserves the right to contact a Contractor after the submission of Proposals to obtain clarification of a Proposal. This contact may include written questions, interviews, site visits, a review of past performance if the Contractor has

provided services to the State or any other political subdivision wherever located, or requests for corrective pages in the Contractor's Proposal. The Authority will not consider information received from or through Contractor if the information materially alters the content of the Proposal or the type of services the Contractor is offering to the Authority. An individual authorized to legally bind the Contractor shall sign responses to any request for clarification. Responses shall be submitted to the Authority within the time specified in the Authority's request. Failure to comply with requests for additional information may result in rejection of the Proposal.

5.18 Disposition of Proposals. All Proposals become the property of the State and shall not be returned to the Contractor. Once the Authority issues a Notice of Intent to Award the Contract, the contents of all Proposals will be in the public domain and be available for inspection by interested parties, except for information for which Contractor properly requests confidential treatment or according to exceptions provided in Iowa Code Chapter 22 or other applicable law.

5.19 Public Records and Requests for Confidential Treatment. The Authority will treat all information submitted by a Contractor as public records unless the Contractor properly requests that specific parts of the Proposal be treated as confidential at the time of submitting the Proposal AND the information is confidential under Iowa or other applicable law. The Authority's release of public records is governed by Iowa Code Chapter 22. Contractors are encouraged to familiarize themselves with Chapter 22 before submitting a Proposal. The Authority will copy and produce public records as required to comply with Chapter 22 or other applicable law.

Any request for confidential treatment of specific information must be included in the transmittal letter with the Contractor's Proposal. For **each** confidentiality request, the Contractor must (1) enumerate the specific grounds in Iowa Code chapter 22 or other applicable law that supports treatment of the material as confidential, (2) provides adequate justification as to why the material should be maintained in confidence, (3) explains why disclosure of the material would not be in the best interest of the public, and (4) sets forth the name, address, telephone, and e-mail for the person authorized by applicant to respond to inquiries by the Authority concerning the confidential status of such material. An applicant's request for confidentiality that does not comply with this section or an applicant's request for confidentiality on information or material that cannot be held in confidence as set forth herein are grounds for rejecting a Proposal as non-responsive.

Any Proposal submitted which contains information for which Contractor is requesting Confidential treatment must be conspicuously marked by the Contractor as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Failure to properly identify specific information as confidential shall relieve the Authority or State personnel from any responsibility if confidential information is viewed by the public or a competitor, or is in any way released. If Contractor identifies its entire Proposal as confidential, the Authority will reject the Proposal as non-responsive.

If the Contractor designates any portion of its Proposal as confidential, the Contractor must submit a copy labeled as "Public Copy" from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in Section 3 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the Proposal as possible.

If the Authority receives a request for information that includes information Contractor has marked as confidential and the Authority intends to release such information, the Authority will give written notice to the Contractor at least seven calendar days prior to the release of the information to

allow the Contractor to seek injunctive relief pursuant to Iowa Code Section 22.8. After seven calendar days, the Authority will release the information marked confidential unless a court of competent jurisdiction determines the information is confidential under Iowa Code Chapter 22 or other applicable law.

If Contractor fails to comply with the request process set forth herein, if Contractor's request for confidentiality is unreasonable, or if Contractor rescinds its request for confidential treatment, the Authority may release such information or material with or without providing advance notice to Contractor and with or without affording Contractor the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction.

The Contractor's failure to request confidential treatment of material will be deemed a waiver of any right to confidentiality the Contractor may have had.

5.20 Copyright Permission. By submitting a Proposal, the Contractor agrees that the Authority can copy the Proposal for purposes of facilitating the evaluation of the Proposal or to respond to requests for public records. By submitting a Proposal, the Contractor consents to such copying and warrants that such copying will not violate the rights of any third party. The Authority shall have the right to use ideas or adaptations of ideas that are presented in Proposals.

5.21 Release of Claims. By submitting a Proposal, the Contractor agrees that it will not bring any claim or cause of action against the Authority based on any misunderstanding concerning the information provided in the RFP or concerning the IEDA's failure, negligent or otherwise, to provide the Contractor with pertinent information in this RFP.

5.22 Evaluation of Proposals Submitted. Proposals that are timely submitted and are not rejected will be reviewed in accordance with Section 4 of the RFP. The Authority will not necessarily award a contract resulting from this RFP to the Contractor offering the lowest cost. Instead, the Authority will award the Contract(s) to the Responsible Contractor(s) whose Responsive Proposal the Authority believes will provide the best value to the Authority and the State.

5.23 Award Notice and Acceptance Period. Notice of Intent to Award the Contract(s) will be sent to all Contractors submitting a timely Proposal and may be posted at the website shown on the RFP cover sheet. Negotiation and execution of the Contract(s) shall be completed no later than thirty (30) days from the date of the Notice of Intent to Award or such other time as designated by the Authority. If the successful Contractor fails to negotiate and deliver an executed Contract by that date, the Authority, in its sole discretion, may cancel the award and award the Contract to the remaining Contractor the Authority believes will provide the best value to the State.

5.24 No Contract Rights until Execution. No Contractor shall acquire any legal or equitable rights regarding the Contract unless and until the Contract has been fully executed by the successful Contractor and the Authority.

5.25 Choice of Law and Forum. This RFP and the Contract shall be governed by the laws of the State of Iowa. Changes in applicable laws and rules may affect the award process or the Contract. Contractors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

5.26 Restrictions on Gifts and Activities. Iowa Code Chapter 68B restricts gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with State government. Contractors are responsible to determine the applicability of this Chapter 68B to their activities and to comply with its requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

5.27 No Minimum Guaranteed. The Authority does not guarantee any minimum level of purchases under the Contract.

SECTION 6: CONTRACTUAL TERMS AND CONDITIONS

6.1 Contract Terms and Conditions. The Contract that the Authority expects to award as a result of this RFP shall comprise the specifications, terms and conditions of the RFP, written clarifications or changes made in accordance with the provisions of the RFP, the contract terms and conditions contained in the standard state of Iowa contract for services, the offer of the successful Contractor contained in its Proposal, and any other terms deemed necessary by the Authority. No objection or amendment by a Contractor to the provisions or terms and conditions of the RFP shall be incorporated into the Contract unless the Authority has explicitly accepted the Contractor's objection or amendment in writing. All costs associated with complying with these requirements shall be included in any pricing quoted by the Contractor.

By submitting a Proposal, each Contractor acknowledges its acceptance of the RFP specifications and the contract terms and conditions without change except as otherwise expressly stated in its Proposal. If a Contractor takes exception to a provision, it must state the reason for the exception and set forth in its Proposal the specific RFP or contract language it proposes to include in place of the provision. Exceptions that materially change the contract terms and conditions or the requirements of the RFP may be deemed non-responsive by the Authority, in its sole discretion, resulting in possible rejection of the Proposal. The Authority reserves the right to either award a Contract(s) without further negotiation with the successful Contractor or to negotiate Contract terms with the successful Contractor if the best interests of the State would be served.

6.2 Contract Length. The term of the Contract will begin and end on the dates indicated on the RFP cover sheet or as otherwise negotiated by the Authority and the selected contractor. The Authority shall have the sole option to renew the Contract upon the same or more favorable terms and conditions for up to the number of extensions identified on the RFP cover sheet. The Authority reserves the right to adjust begin and end dates if, in the judgment of the Authority, it is in the State's best interest to do so.

6.3 Insurance: The Authority reserves the right to require the winning Contractor(s) to secure professional liability coverage, general liability, standard liability business rider, personal injury, property damage coverage and any necessary workers' compensation and employer liability insurance, as required by Iowa law with no additional cost to the state beyond Contractor's original bid. The State of Iowa and the Authority shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable. The Authority may require the winning vendor to provide a copy of the insurance certificate to the Authority.

6.4 Terms. The Authority shall use a services contract for services procured under this RFP. The Contractor shall be expected to execute that contract upon award of the contract. A template of a services contract is available upon request. The Authority reserves the right to diverge from the template as it deems appropriate.

6.5 Funding. All federal and state terms and conditions as applicable to the source of funds shall apply.

**Attachment # 1
Certification Letter**

Alterations to this document are prohibited, see section 5.12.15.

[Date]

Lisa Connell, Issuing Officer
Iowa Economic Development Authority
1963 Bell Ave, Suite 200
Des Moines, IA 50315

Re: Energy Efficiency Revolving Loan Fund Partner

Dear Lisa Connell:

I certify that the contents of the Proposal submitted on behalf of [Name of Contractor] _____ (Contractor) in response to the Iowa Economic Development Authority (Authority) for Request for Proposal for Energy Efficiency Revolving Loan Fund Partner are true and accurate. I also certify that Contractor has not knowingly made any false statements in its Proposal.

Certification of Independence

I certify that I am a representative of Contractor expressly authorized to make the following certifications on behalf of Contractor. By submitting a Proposal in response to the RFP, I certify in behalf of the Contractor the following:

1. The Proposal has been developed independently, without consultation, communication or agreement with any employee or consultant to the Authority or with any person serving as a member of the evaluation committee.
2. The Proposal has been developed independently, without consultation, communication or agreement with any other contractor or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the Proposal has not been and will not be knowingly disclosed, directly or indirectly prior to IEDA's issuance of the Notice of Intent to Award the contract.
4. No attempt has been made or will be made by Contractor to induce any other contractor to submit or not to submit a Proposal for the purpose of restricting competition.
5. No relationship exists or will exist during the contract period between Contractor and the Authority or any other State agency that interferes with fair competition or constitutes a conflict of interest.

Certification Regarding Debarment

6. I certify that, to the best of my knowledge, neither Contractor nor any of its principals: (a) are presently or have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency; (b) have within a three year period preceding this Proposal been convicted of, or

had a civil judgment rendered against them for commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this Proposal had one or more public transactions (federal, state, or local) terminated for cause.

This certification is a material representation of fact upon which the Authority has relied upon when this transaction was entered. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available, the Authority can pursue available remedies including suspension, debarment, or termination of the contract.

Certification Regarding Registration, Collection, and Remission of Sales and Use Tax

7. A retailer in Iowa or a retailer maintaining a business in Iowa that enters a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under Iowa Code chapter 423 on all sales of tangible personal property and enumerated services, unless an exemption applies. The Act also requires Contractors to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

By submitting a Proposal in response to the (RFP), the Contractor certifies the following: (check the applicable box)

- Contractor is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code Chapter 432; or
- Contractor is not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(47) and (48) or Contractor is exempt from collection of Iowa sales and use and can provide documentation of such exemption on request.

Contractor also acknowledges that the Authority **can** declare the Contractor’s Proposal or resulting contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Authority or its representative filing for damages for breach of contract in addition to other remedies available to the Authority.

Sincerely,

[Name and Title]

Attachment #2
Authorization to Release Information Letter
Alterations to this document are prohibited, see section 5.12.15.

[Date]

Lisa Connell, Issuing Officer
Iowa Economic Development Authority
1963 Bell Ave, Suite 200
Des Moines, IA 50315

Re: Authorization To Release Information

Dear Lisa Connell:

[Name of Contractor] _____ (Contractor) hereby authorizes the Iowa Economic Development Authority (Authority) or a member of the Evaluation Committee to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Contractor in response to Request for Proposal (RFP) entitled: Energy Efficiency Revolving Loan Fund Partner.

The Contractor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Contractor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the State or may otherwise hurt its reputation or operations. The Contractor is willing to take that risk.

The Contractor hereby releases, acquits and forever discharges the State of Iowa, the Authority, their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the Authority or the Evaluation Committee in the evaluation and selection of a successful Contractor in response to the RFP.

The Contractor authorizes representatives of the Authority or the Evaluation Committee to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the Contractor's Proposal submitted in response to RFP.

The Contractor further authorizes any and all persons and entities to provide information, data, and opinions regarding its performance under any contract, agreement, or other business arrangement, its ability to perform, business reputation, and any other matter pertinent to the evaluation of the Contractor's Proposal. The Contractor hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the Contractor that it may have or ever claim to have relating to information, data, opinions, and references supplied to the Authority or the Evaluation Committee in the evaluation and selection of a successful Contractor in response to RFP.

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

[Printed Name of Contractor Organization]

[Name and Title of Authorized Representative]

Date

**ATTACHMENT # 3
Cost Proposal**

The costs shall be provided per task or deliverable described in section 2.2 of this RFP. Contractor's Cost Proposal shall include an all-inclusive, itemized, total cost in U.S. Dollars (including all travel, expenses, etc. in prices). Pricing to be inclusive of all costs of travel, photography, printing, data, supplies and other expenses necessary to carry out all tasks. Net 60 Days Payment Terms. Per Iowa Code 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a vendor.

Use of the following template is required. Please use additional pages to provide any additional narrative support for the costing information.

Cost Proposal Template

The cost proposal shall be broken into the following components:

Task or Deliverable	Estimated Hours	Proposed Hourly Rate	Estimated Expenses	Estimated Professional fees / costs in US Dollars
Administration and Reporting				
Marketing and Outreach				
Technical Assistance				
Compliance (approx. 10-25 loan projects)				
Audit Services (approx. 10-25 audits)				
TOTAL COST:				

Attachment 4 Energy Audit Requirements

Energy Audit, Retrofit, and Upgrade Requirements

For loans and grants provided through this program, mandatory and optional requirements for eligible activities are laid out in IIJA Section 40502 (e) and described in the table below.

Commercial Energy Audits	<i>REQUIRED</i>	<ul style="list-style-type: none"> • Determine the overall consumption of energy of the facility of the eligible recipient. • Identify and recommend lifecycle cost-effective opportunities to reduce the energy consumption of the facility of the eligible recipient. • Identify the period and level of peak energy demand for each building within the facility of the eligible recipient and the sources of energy consumption that are contributing the most to that period of peak energy demand. • Recommend controls and management systems to reduce or redistribute peak energy consumption. • Estimate the total energy and cost savings potential for the facility of the eligible recipient if all recommended upgrades and retrofits are implemented, using software approved by DOE.²¹
	<i>OPTIONAL</i>	<ul style="list-style-type: none"> • Recommend strategies to increase energy efficiency of the facility of the eligible recipient through use of electric systems or other high-efficiency systems utilizing fuels, including natural gas and hydrogen.
Commercial Upgrades and Retrofits	<i>REQUIRED</i>	<ul style="list-style-type: none"> • <i>Recommended in the qualifying commercial energy audit or residential energy audit, as applicable, completed for the building or facility of the eligible recipient.</i> • <i>Satisfy at least 1 of the criteria in the Home Performance Assessment used in the Energy Star program (residential only).</i> • <i>Are life-cycle cost-effective.</i> • <i>Improve, with respect to the building or facility of the eligible recipient, at least one of the following:</i> <ul style="list-style-type: none"> o <i>The physical comfort of the building or facility occupants.</i> o <i>The energy efficiency of the building or facility.</i> o <i>The quality of the air in the building or facility.</i> • <i>Lead to at least one of the following outcomes:</i> <ul style="list-style-type: none"> o <i>Reduce the energy intensity of the building or facility of the eligible recipient.</i> o <i>Improve the control and management of energy usage of the building or facility to reduce demand during peak times.</i>

Software Requirements

Commercial energy audits financed through the EE RLF Program must estimate the total energy and cost savings potential for the facility of the eligible recipient if all recommended upgrades and retrofits are implemented, using software approved by DOE.

- *DOE recommendation:* Use the [Audit Template](#) software for audits of commercial and multifamily buildings to accomplish ASHRAE Level II Audits.
- *Require use of software that uses [BuildingSync](#)* (e.g., a standard format for conveying data), which is used by multiple energy audit software tools. For information on industry collaborators and current adopters of BuildingSync, please refer to <https://buildingdata.energy.gov/#/building-sync/collaborators>.

**Attachment 5
Required Quarterly & Annual Reporting Metrics**

ADMINISTRATIVE

Education & Outreach Conducted

Number of contacts reached via webinars, site visits, fact sheets, or other (count)	X
Number of workshops, training, and education sessions held (count)	X
Number of people attending workshops, training, and education sessions (count)	X

GRANTS & LOANS

Energy audits and savings unit type

Number of investment grade audits (IGAs) performed (count)	X
Number of non-investment grade audits (IGAs) performed (count)	X
Square footage of buildings/facilities audited (square feet)	X
Auditor's projection of energy savings (user-specified units)	X
Average Daily Flow of WWTF audited (MGD)	X
Number of projects started based on audits (count)	x

Buildings retrofitted and savings unit type

Number of buildings retrofitted (count)	X
Square footage of buildings retrofitted (square feet)	X
Estimated project savings (user-specified units)	X

Building automation systems (BAS) installed

Number of energy management systems installed (count)	X
Square footage of buildings with systems installed (square feet)	X

Energy, water saved

Reduction in electricity consumption (megawatt-hours per year)	X
Reduction in water consumption (gallons per day)	X
Reduction in fuel oil consumption (gallons per year)	X
Reduction in natural gas consumption (million cubic feet per year)	X
Dollars saved (dollars)	\$ X

Attachment 6
DOE Special Terms and Conditions
(on following pages)



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

For all recipients except GUAM

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 and contacting NEPA with any questions at GONEPA@ee.doe.gov.

8. This authorization excludes any activities that are otherwise subject to a restriction set forth elsewhere in the Award.

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

For all recipients except Guam.

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 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](https://www.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-EE0010339.”
- *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 Recipient has a federally approved provisional Negotiated Indirect Cost Rate Agreement (NICRA) with a current effective period identified for billing and estimation purposes and it applies uniformly across all federal awards. These costs shall be reconciled or trued up (actual incurred costs) on an annual basis with the Recipient’s cognizant agency. An updated rate proposal or NICRA is required if the Recipient requests to bill the DOE higher billing rates than those listed in the current NICRA.

B. Fringe Cost Allocation:

Fringe benefit costs have been allocated to this award under a segregated fringe billing rate. The fringe costs were found to be reasonable, allocable, and allowable as reflected in the budget. Fringe elements apply to both direct and indirect labor. Under a segregated cost pool, the fringe billing rate shall be treated as an indirect cost expenditure and must be reconciled annually.

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.

ii. Annual Cost Reconciliation

Delete if Indirect Cost Allocation Alternate 1, 2 or 3 above were chosen.

In accordance with Appendices III-VII of 2 CFR Part 200 or 48 CFR 42.7, governing for-profit organizations, the indirect cost billing rates shall be reconciled or trued up (actual incurred costs) on an annual basis via the annual incurred cost proposal within six months after the Recipient's fiscal year end.

iii. Adjustments to Indirect Cost Billing Rates

Delete if Indirect Cost Allocation Alternate 1, 2 or 3 above were chosen.

Following an official audit or adequacy review of the incurred cost proposal, one of the following shall apply:

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.

iv. Cost Sharing Indirect Costs

Indirect costs may be used as cost share only with prior approval from the Contracting Officer.

v. 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.^[1]
- A completed Environmental Questionnaire, if applicable.
- An assurance that the subrecipient is not a debarred or suspended entity.
- 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.

^[1] 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.

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/department-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-IJACybersecurityplans@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.