

**NORTHWEST ARCTIC BOROUGH ASSEMBLY
RESOLUTION 24-43**

**A RESOLUTION OF THE NORTHWEST ARCTIC
BOROUGH ASSEMBLY ACCEPTING THREE GRANT
AWARDS (DE-CD0000070, DE-CD0000118, DE-IE0000196)
FROM THE U.S. DEPARTMENT OF ENERGY, AND FOR
RELATED PURPOSES.**

WHEREAS: the Northwest Arctic Borough Assembly is the governing body for the Northwest Arctic Borough; and

WHEREAS: the Borough is a home rule regional government and provides essential programs and services to improve the quality of life for all residents and the Borough's 11 communities; and

WHEREAS: the U.S. Department of Energy ("DOE") Office of Clean Energy Demonstrations ("OCED"), selected the Borough, NANA Regional Corporation, and the Kotzebue Electric Association ("KEA") with intent to award a \$54,811,907 project for a Solar PV, Battery Storage and Heat Pumps in Northwest Arctic Alaska (the "Regional Award") through the Energy Improvement in Rural or Remote Areas Program; and

WHEREAS: the Borough Assembly passed Ordinance 23-05 to apply for the Regional Award and authorized the required non-federal cost share, \$5 million of which will come from the Borough; and

WHEREAS: as part of the Regional Award, the Borough's 11 villages will see the following subprojects installed and constructed at the approximate sizing listed below:

- 1) Kotzebue. In conjunction with KEA, the Borough will construct, install, and commence operations of 0.30 MW of solar photovoltaic generation ("PV") and 4 MWh of battery electric storage system ("BESS") capacity;
- 2) Ambler. The Borough will construct, install, and commence operations of 0.99 MWh of BESS;
- 3) Buckland. The Borough will construct, install, and commence operations of 0.32 MW of solar PV, 0.51 MWh of BESS, and 110 residential home heat pumps;

- 4) Deering. The Borough will construct, install, and commence operations of 0.14 MW of solar PV, 0.26 MWh of BESS, and 52 residential heat pumps;
- 5) Kiana. The Borough will construct, install, and commence operations of 0.51 MW of solar PV, 0.51 MWh of BESS, and 127 residential heat pumps;
- 6) Kivalina. The Borough will install and commence operations of 0.36 MW of solar PV, 0.51 MWh of BESS, and 82 residential heat pumps;
- 7) Noatak. The Borough will construct, install, and commence operations of 0.22 MW of solar PV and 130 residential heat pumps;
- 8) Noorvik. The Borough will construct, install, and commence operations of 0.56 MW of solar PV, 0.77 MWh of BESS, and 151 residential heat pumps;
- 9) Selawik. The Borough will construct, install, and commence operations of 0.21 MW of solar PV and 119 residential heat pumps;
- 10) Shungnak-Kobuk. The Borough will construct, install, and commence operations of 0.16 MW of solar PV and 88 residential heat pumps. Between the villages of Kobuk and Shungnak, the Borough will build a medium voltage direct current (“MVDC”) electrical intertie consisting of two DC converter stations and approximately 10 miles of overhead DC line; and

WHEREAS: the Borough and OCED are entering into a Cooperative Agreement to govern the distribution and construction under the Regional Award; and

WHEREAS: pursuant to the Regional Award’s Cooperative Agreement, the award will be distributed in phases, with the first award (“Phase 1”) equaling \$9,198,251; and

WHEREAS: the full Regional Award is subject to the OCED’s decision to continue the grant, the availability of funds appropriated by Congress, and the availability of future-year budget authority; and

WHEREAS: OCED also selected the Borough with intent to award \$2,833,030 over two years to upgrade the existing power plant in Ambler, Alaska (the “OCED-Ambler Award”); and

WHEREAS: the DOE Office of Indian Energy selected the Borough and the Village of Ambler for an award of \$3,435,988.00 to construct, install, and commence operations of 0.5 MW of solar PV (“OIE-Ambler”); and

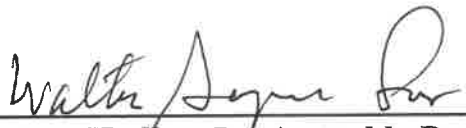
WHEREAS: the Village of Ambler and the Borough will create a Tribal Independent Power Producer to sell power generated by the solar PV and BESS system to Alaska Village Electric Cooperative; and

WHEREAS: the Regional Award, the OCED-Ambler Award, and the OIE-Ambler Award are interrelated and designed in concert to increase regional renewable energy generation, to enhance local energy independence, to reduce local diesel fuel use, to increase local and regional jobs across the region and on an equitable basis.

NOW THEREFORE BE IT RESOLVED by the Northwest Arctic Borough Assembly as follows:

1. For the Regional Award, the Borough accepts the award pursuant to Term 1 of the Regional Award's Cooperative Agreement. The Borough will proceed with Phase 1 of the Regional Award pursuant to the Cooperative Agreement's terms. The Borough will proceed under the Cooperative Agreement terms and pursue the full award in the subsequent phases.
2. For the OCED-Ambler Award, the Borough accepts the award pursuant to the pending Fixed Award Agreement.
3. For the OIE-Ambler Award, the Borough accepts the award pursuant to the pending OIE Award Agreement.
4. The Mayor is authorized to executed OCED cooperative agreements with regional partners as necessary to carry out the award terms.

PASSED AND ADOPTED THIS 30th DAY OF OCTOBER 2024.



Nathan Hadley, Jr., Assembly President

PASSED AND APPROVED THIS 30th DAY OF OCTOBER 2024.



Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS 30th DAY OF OCTOBER 2024.



Stella Atoruk, Borough Clerk

ATTEST:





Cooperative Agreement Program and Award-Specific Terms and Conditions

Table of Contents

Term 1.	Approved Budget	2
Term 2.	Period of Performance and Budget Periods	2
Term 3.	Critical Project Activities for the Current Budget Period	5
Term 4.	Specific and Special Award Conditions	5
Term 5.	Go/No-Go Review Criteria	5
Term 6.	Subawards.....	7
Term 7.	Incorporation by Reference	7
Term 8.	Payment Procedures.....	7
Term 9.	Indirect and Fringe Costs	8
Term 10.	Prior Approvals for Real Property and Equipment Acquisition with Federal Funds.....	9
Term 11.	National Environmental Policy Act (“NEPA”) Requirements	9
Term 12.	Security Point of Contact	10
Term 13.	Build America Buy America Requirements for Infrastructure Projects	10
Term 14.	Long-Lead Procurement.....	13

Term 1. Approved Budget

DOE has selected this Award for a maximum Federal share of \$54,811,907. DOE is only obligating funds associated with the current Budget Period as shown in Block 13 of the Assistance Agreement. Use of funding for any future Budget Period is contingent upon DOE’s continuation decision, the availability of funds appropriated by Congress, and the availability of future-year budget authority.

The Recipient will submit an invoice to DOE for reasonable, allowable, and allocable costs for the invoice period. DOE will reimburse 80% of such costs until DOE meets its maximum cost share in Table 1-1. Once the maximum cost share is met, DOE will not further reimburse for costs above DOE’s maximum cost share.

At the end of each Budget Period, DOE’s share of costs must not exceed 80% of the total project costs incurred since the start of the Award. The Recipient is responsible for any additional amounts needed to complete the objectives.

Table 1-1 lists the maximum Federal share, the minimum Recipient share, and the total direct and indirect costs for the current Budget Period.

Table 1-1. Direct and Indirect Costs for the Current Budget Period

Cost Type	Maximum DOE Share	Minimum Recipient Share	Total
Direct Costs	\$8,435,378	\$2,299,563	\$10,734,941
Indirect Costs	\$762,873	\$0	\$762,873
Total	\$9,198,251	\$2,299,563	\$11,497,814

Term 2. Period of Performance and Budget Periods

Consistent with 2 CFR § 200.1, Period of Performance means the time between the award start and the end date, and it can include one or more Budget Periods. The Period of Performance for this Award is stated in Block 7 of the Assistance Agreement.

DOE is authorizing the Budget Period(s) stated below. The Recipient is responsible for its share as described below and any additional amounts needed to complete the objectives.

Table 2-1. Authorized Budget Period and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$11,497,814	\$9,198,251

The maximum share that DOE will provide for each future Budget Period is listed below.

Table 2-2. Anticipated Future Funding

Budget Period	Maximum DOE Funding
2	\$18,516,542
3	\$16,304,756
4	\$10,792,358
Budget Periods 2-4 Total	\$45,613,656

The Award will be carried out using separate sub-projects:

1. Kotzebue. In the village of Kotzebue, Alaska, install and commence operations of 0.30 MW of solar photovoltaic generation (PV) and 4 MWh of battery electric storage system (BESS) capacity.
2. Ambler. In the village of Ambler, Alaska, install and commence operations of 0.99 MWh of BESS.
3. Buckland. In the village of Buckland, Alaska, install and commence operations of 0.32 MW of solar PV, 0.51 MWh of BESS, and 110 residential heat pumps.
4. Deering. In the village of Deering, Alaska, install and commence operations of 0.14 MW of solar PV, 0.26 MWh of BESS, and 52 residential heat pumps.
5. Kiana. In the village of Kiana, Alaska, install and commence operations of 0.51 MW of solar PV, 0.51 MWh of BESS, and 127 residential heat pumps.
6. Kivalina. In the village of Kivalina, Alaska, install and commence operations of 0.36 MW of solar PV, 0.51 MWh of BESS, and 82 residential heat pumps.
7. Noatak. In the village of Noatak, Alaska, install and commence operations of 0.22 MW of solar PV, no BESS, and 130 residential heat pumps.
8. Noorvik. In the village of Noorvik, Alaska, install and commence operations of 0.56 MW of solar PV, 0.77 MWh of BESS, and 151 residential heat pumps.
9. Selawik. In the village of Selawik, Alaska, install and commence operations of 0.21 MW of solar PV, no BESS, and 119 residential heat pumps.
10. Shungnak-Kobuk. In the villages of Shungnak and Kobuk, Alaska, install and commence operations of 0.16 MW of solar PV, no BESS, and 88 residential heat pumps.
11. MVDC Link. Between the villages of Kobuk and Shungnak, build a medium voltage direct current link consisting of two DC converter stations and approximately 10 miles of overhead DC line.

The Budget Period(s) and funding DOE is authorizing for each sub-project are stated below.

Table 2-3. Sub-Project 1: Kotzebue, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
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1	TBD	3/31/2025	\$3,967,670	\$3,174,136
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Table 2-4. Sub-Project 2: Ambler, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$2,195,600	\$1,756,480

Table 2-5. Sub-Project 3: Buckland, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$155,775	\$124,620

Table 2-6. Sub-Project 4: Deering, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$467,775	\$374,220

Table 2-7. Sub-Project 5: Kiana, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$152,065	\$121,652

Table 2-8. Sub-Project 6: Kivalina, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$152,065	\$121,652

Table 2-9. Sub-Project 7: Noatak, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$934,490	\$747,592

Table 2-10. Sub-Project 8: Noorvik, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$152,065	\$121,652

Table 2-11. Sub-Project 9: Selawik, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding

1	TBD	3/31/2025	\$1,054,424	\$843,539
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Table 2-12. Sub-Project 10: Shungnak-Kobuk, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$683,063	\$546,450

Table 2-13. Sub-Project 11: MVDC Link, Authorized Budget Period(s) and Funding

Budget Period	Start Date	Estimated End Date	Estimated Total Cost	Maximum DOE Funding
1	TBD	3/31/2025	\$1,582,822	\$1,266,258

Term 3. Critical Project Activities for the Current Budget Period

Budget Period 1 is designed to identify, minimize, and mitigate project business risks. During the authorized Budget Period(s), the Recipient will work toward the achievement of the following critical objectives for each sub-project:

- Obtain land rights.
- Deinstall wind turbine towers in Selawik.
- Identify all required upgrades to existing electrical infrastructure.
- As specified by DOE, prepare an environmental information volume (EIV) or environmental considerations survey (ECS) to support OCED’s National Environmental Policy Act (NEPA) evaluation of construction and operating impacts.
- Initiate community and labor engagement activities, such as (i) a public information session (ii) a community survey, or (iii) a website where community members can submit comments.
- Local stakeholder engagement to develop tribal independent power producers.
- Host regional heat pump installation training at Alaska Technical Center (ATC).
- Size and preliminarily design the solar array and battery.
- Identify long lead procurement items and start steps toward the procurement of these items.

Term 4. Specific and Special Award Conditions

The following conditions apply to the approved activities:

- There are no specific and special award conditions..

Term 5. Go/No-Go Review Criteria

Consistent with Term 14 of the Standard Term and Conditions, DOE will consider the following Go/No-Go Review Criteria in making a continuation decision for advancement from Budget Period 1 to Budget Period 2.

Table 5. Go/No-Go Review Criteria to Advance from Budget Period 1 to Budget Period 2

Criterion No.	Description	Verification Method
1	<u>Management</u> . Plans and structures are appropriate to execute Budget Period 2.	A project management plan developed based on the template provided by DOE and deemed suitable by DOE.
2	<u>Funding</u> . Recipient has funds to cover its cost share.	Letter or agreements.
3	<u>Permitting</u> . A plan exists to obtain all applicable state, local, tribal, and federal approvals, permits, and authorizations including approval by the applicable fire departments.	Permit list and plan.
4	<u>Land</u> . Site control secured	Copy of deeds, long-term leases or equivalent documents.
5	<u>NEPA</u> . As specified by DOE, submission of the EIV or ECS, which contains all information necessary for DOE to complete its NEPA review.	As specified by DOE, EIV or ECS.
6	<u>Interconnection</u> . Required electric upgrades are accounted for in project economics and schedule.	Electrical interconnection study or analysis, financial model, schedule.
7	<u>Engagement</u> . The project has the full support of the tribal government. An appropriate plan for engaging with affected tribal members has been identified in cooperation and with the approval of tribal leadership.	Reports submitted as indicated in the Federal Assistance Reporting Checklist (FARC); End of Budget Period 1 Community Benefits Summary Report.
8	<u>Partnerships</u> . The project has demonstrated progress towards partnerships to which they have made commitments.	Memorandums of understanding (MOUs), contracts, or other documentation indicating status, type of agreement, and plans and timelines for meeting partnership goals; end of Budget Period 1 Community Benefits Summary.
9	<u>Impacts</u> . Project has identified expected positive and negative impacts and where they will flow.	Reports submitted as indicated in the FARC; end of Budget Period 1 Community Benefits Summary Report; Table or list of potential impacts and assessments, methodology, plans, and descriptions.
10	<u>Jobs</u> . Initial, site-specific staffing and workforce development needs have been identified and appropriate strategies have been planned to ensure a sufficiently skilled and trained workforce for Budget Periods 2-4, including targets for quality job creation, on-the-job training such as Registered Apprenticeships, equitable pathways to support workforce development, and any recruitment and retention	Reports submitted as indicated in the FARC; MOUs with workforce development partners; End of Budget Period 1 Community Benefits Summary Report.

	programs for local workers, underrepresented groups, or residents of disadvantaged communities.	
11	<u>Public Communication Platform</u> . A website or other public and easily accessed platform (radio, newsletter, community center post) has been created that provides disclosable information related to (i) project location, (ii) technology type and description, (iii) updates on project activities, (iv) contact information for project liaison, (v) a mechanism such as email for the public to submit feedback, and (vi) engagement opportunities.	List of platforms (radio station, newsletter, website links, community center post locations); documentation of information posted.

The documents and information listed in the verification method column are not exhaustive. The Recipient may provide additional documents and information to DOE. DOE may request additional documents and information and may consider other documents and information when evaluating these Go/No-Go Review Criteria.

Term 6. Subawards

The following subawards are approved:

1. Alaska Village Electric Cooperative (AVEC), UEI: RU1PSRZHGGK5 Anchorage, Alaska.
2. Kotzebue Electric Association (KEA), UEI: D9NNVG6ESNQ8, Kotzebue, Alaska.

Term 7. Incorporation by Reference

In addition to the items listed in the Incorporation by Reference Standard Term and Condition, the following are incorporated into this Award by reference:

1. Revised Budget Submission dated 9/29/2024.
2. The Recipient’s application unless modified or superseded.
3. DOE Categorical Exclusion (OCED-00070-001-CX) issued 7/26/2024.
4. Provisional Fringe and Indirect Rate Agreement dated 8/22/2024.

Term 8. Payment Procedures

A. Requesting Payment

The Recipient is required to request payments electronically through DOE’s Vendor Invoicing Portal & Electronic Reporting System (“VIPERS”) system. The Recipient must request payments in amounts necessary to meet its current needs. To access and use VIPERS, the Recipient must enroll at <https://vipers.doe.gov>. Detailed instructions on how to enroll are provided on the website.

B. Adjusting Payment Requests for Available Cash

In accordance with 2 CFR § 200.305(b)(5), to the extent available, the Recipient must disburse any funds that are available from program income including repayments to a revolving fund, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

C. Payments

Upon DOE approval of the Recipient's electronic payment request, DOE will disburse payment electronically to the Recipient's registered bank account. DOE will approve payment requests in 30 calendar days unless the billing and/or supporting documentation provided by the Recipient is improper. The Recipient may check the status of payments at the VIPERS website.

D. Reimbursement Limitation of Federal Funds

For each Budget Period and sub-project, the Recipient may not request more than the Federal share authorized for that Budget Period and sub-project.

E. Supporting Documents for Agency Approval of Payments

1. Summary cost data, including cost share amounts for the billing period and cumulative cost data, showing all budget cost categories listed in the SF-424 and identifying Federal, non-Federal, and total amounts.
2. SF-270 (Request for Advance or Reimbursement).
3. Invoices/receipts for all equipment purchases, contractors, and subawards.
4. A statement affirming that invoiced costs are related only to tasks or activities authorized by a final NEPA determination.

DOE may request additional information from the Recipient to support the payment requests prior to release of funds. The Recipient must comply with these requests. Supporting documents may include, but are not limited to, invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the payment requests.

F. Post Payment Review

If requested by DOE, the Recipient must provide documentation supporting DOE's post payment review of invoices and costs in a form and manner specified by DOE. These post payment reviews are in addition to audits.

Term 9. Indirect and Fringe Costs

A. Indirect Cost Allocation

Indirect Cost Rate(s) for this Award are stated in the Provisional Fringe and Indirect Rate Agreement, dated August 22, 2024, which is incorporated into the Award.

B. Subrecipient Indirect Costs

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.

C. Fringe Cost Allocation

Fringe Cost Rate(s) for this Award are stated in the Provisional Fringe and Indirect Rate Agreement, dated August 22, 2024, which is incorporated into the Award. Fringe elements apply to both direct and indirect labor.

D. Reconciliation

Consistent with applicable regulations, the cost billing rates shall be reconciled or tried up on an annual basis via the annual incurred cost proposal within six months after the Recipient's fiscal year end. If an audit is performed, the cost billing rates can be subsequently tried up based on the results of the audit.

E. Modifications to Cost Billing Rates

Proposed modifications to the Recipient's cost billing rates must be approved by the Recipient's Cognizant Agency for Indirect Costs (as defined in 2 CFR § 200.1) or Cognizant Federal Official (for OCED, the Director of Financial Oversight and Performance is the Cognizant Federal Agency Official).

When the Recipient enters into a Negotiated Indirect Cost Rate Agreement ("NICRA") or updates a NICRA and OCED is not the Recipient's Cognizant Agency for Indirect Costs, the Recipient must promptly provide OCED with a copy of the NICRA.

When OCED is the Recipient's Cognizant Agency for Indirect Costs, to change cost billing rates, the Recipient must submit proposed changes to OCED for approval.

F. Rebudgeting and Recovery

If actual allowable costs are less than those budgeted and funded under the Award, the Recipient may use the difference to pay additional allowable direct costs during the Period of Performance. If at the completion of the Award DOE's share of total allowable costs (i.e., direct costs and indirect costs) is less than total costs reimbursed, the Recipient must refund the difference.

The Recipient must manage its indirect costs. DOE will not amend this Award solely to provide additional funds for changes in indirect costs. DOE recognizes the inability to obtain full reimbursement for indirect costs means the Recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the Recipient's required cost sharing.

G. Cost Sharing

The Recipient may use unrecovered indirect costs as Recipient cost share only with prior approval from the Grants and Agreements Officer.

H. Award Closeout

The closeout of the 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 10. Prior Approvals for Real Property and Equipment Acquisition with Federal Funds

The Recipient must obtain prior written approval from the Grants and Agreements Officer for real property or equipment purchases with a per unit cost of \$10,000 or more that is not already approved in the budget.

Term 11. National Environmental Policy Act ("NEPA") Requirements

DOE must comply with the National Environmental Policy Act ("NEPA"), 42 USC §§ 4321 *et seq.*, and implementing regulations at 40 CFR Parts 1500 *et seq.* and 10 CFR Part 1021, prior to authorizing the

expenditure of Federal funds. DOE has made a final NEPA determination that is limited to certain actions under this Award by issuing a categorical exclusion (“**CX**”) on July 26, 2024, OCED-00070-001-CX. The Recipient is thereby authorized to use Federal funds for the specific activities and locations described in the CX determination, except where such activity is subject to a restriction set forth elsewhere in this Award. The authorized activities are subject to any conditions listed in the CX determination, which are hereby incorporated into this Term.

Federal funding for award activities and locations that are not included in the CX determination is not authorized. Undertaking unauthorized activities may jeopardize federal involvement in the award. **If the Recipient later intends to add to or modify the activities or locations** as described in the CX determination, those new activities/locations or modified activities/locations are subject to additional NEPA review and are not authorized until the Grants and Agreements Officer provides written authorization for those additions or modifications.

Term 12. Security Point of Contact

The Recipient must designate and provide to DOE the contact information for a point of contact for all security related issues relating to this award.

Term 13. Build America Buy America Requirements for Infrastructure Projects

Buy America Preference. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

- (1) All iron and steel used in the project are 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 that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; 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. The construction material standards are listed below.

Incorporation into an infrastructure project. The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference 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.

Categorization of articles, materials, and supplies. An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) 15 Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

Application of the Buy America Preference by category. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

Determining the cost of components for manufactured products. In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

- (1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- (2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- (3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- (4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

(5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

(6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

(8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that:

- (1) applying the Buy America Preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America Preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.energy.gov/management/doe-buy-america-requirement-waiver-requests>.

Definitions

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

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

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

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

“Infrastructure” means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

“Infrastructure project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

“Iron or steel products” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

“Manufactured products” means:

(1) Articles, materials, or supplies that have been: (i) Processed into a specific form and shape; or (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

“Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

“Section 70917(c) materials” means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

Term 14. Long-Lead Procurement

A. Definition

Long-lead procurement includes equipment as defined in 2 CFR § 200.1 and/or construction materials

that must be ordered prior to the estimated physical construction start date to ensure availability at the time needed so as not to delay construction performance.

B. DOE Approval

The Recipient may only incur costs and be reimbursed through the Award for long-lead procurement purchases that have been reviewed and approved by the G/AO. The Recipient must notify DOE of any additions, changes, or updates to proposed long-lead procurement items.

If additional long-lead procurements are proposed by the Recipient, G/AO prior approval is required and contingent on DOE's review of total costs, review of schedule, project progress, and consideration of NEPA.

C. Iterative Payments

In the event the Award is not continued into subsequent phases or available Federal funding is not adequate to cover the Recipient's future payments on long-lead procurement purchases and/or construction materials, DOE is not responsible for providing additional funding to cover the commitments.



Cooperative Agreement Standard Terms and Conditions

Table of Contents

General	4
Term 1. Legal Authority and Effect	4
Term 2. Incorporation by Reference and Definitions	4
Term 3. Flow Down Requirement	5
Term 4. Resolution of Potentially Conflicting Conditions	5
Term 5. Compliance with Federal, Tribal, State, and Local Laws, and Additional Tribal Considerations	5
Term 6. Permits and Approvals	5
Term 7. Senior and Key Personnel	5
Term 8. Project Management Plan	6
Term 9. Community Benefits Plan Implementation	6
Term 10. Cybersecurity Plan	6
Term 11. Project and Budget Changes	6
Term 12. Pre-Procurement Reviews	7
Term 13. Subawards	7
Term 14. Go/No-Go Reviews and Continuation Decisions	8
Financial	9
Term 15. Cost Sharing	9
Term 16. Refund Obligation	10
Term 17. Allowable Costs	10
Term 18. Program Income	10
Term 19. Insolvency, Bankruptcy, or Receivership	11
Term 20. Audits	11
Term 21. Contingency	12

Administrative	12
Term 22. Independent Cost Reviews and Independent Cost Estimates	12
Term 23. Recipient Inspection Requirements	13
Term 24. Independent Engineering Reviews and Assessments	13
Term 25. Recipient Administrative Organizational Reviews.....	14
Term 26. Record Retention and Access	14
Term 27. Modifications	14
Term 28. At-Risk Oversight and Monitoring.....	14
Term 29. Government Access to Award Information.....	14
Term 30. Cooperative Agreement Termination	15
Term 31. Budget Period Modifications and Extensions	16
Term 32. Insurance Coverage.....	16
Term 33. Liability	16
Term 34. Indemnity	16
Term 35. Decontamination and/or Decommissioning Costs	16
Term 36. Contaminated Sites	17
Term 37. Publications, Public Relations Activities, and Design Elements	17
Term 38. System for Award Management (SAM.gov) and Universal Identifier Requirements	17
Term 39. Corporate Felony Convictions and Federal Tax Liability Assurances	18
Term 40. Conference Spending	18
Term 41. Risk Mitigation and Due Diligence Reviews	19
Term 42. Changes to Recipient’s Board of Directors	19
Term 43. Disclosure of Connections with Foreign Countries of Risk	19
Term 44. Foreign Commitments in Support of the Award	20
Term 45. Waiver Requests – Foreign Entity Participation as a Recipient or Subrecipient.....	20
Term 46. Foreign National Participation.....	21
Term 47. Waiver Requests – Performance of Work in the United States	21
Term 48. Prohibition Related to Foreign Government-Sponsored Talent Recruitment Programs	22
Term 49. Reporting Requirements.....	22
Term 50. Property Standards	23
Term 51. Real Estate Transaction Approval.....	23
National Policy Requirements	23
Term 52. Davis-Bacon Act Requirements	23
Term 53. Export Control	25

Term 54.	Notice Regarding the Purchase of American-Made Equipment and Products	25
Term 55.	Affirmative Action and Pay Transparency Requirements.....	25
Term 56.	Human Subjects Research.....	26
Term 57.	Environmental, Safety, and Health and Performance of Work at DOE Facilities	26
Term 58.	Lobbying Restrictions	26
Term 59.	National Historic Preservation Act Requirements	26
Term 60.	National Environmental Policy Act Requirements.....	27
Term 61.	National Security: Classifiable Information Originating Under an Award	28
Term 62.	Fraud, Waste and Abuse	28
Term 63.	Nondisclosure and Confidentiality Agreements Assurances.....	29
Term 64.	Interim Conflict of Interest Policy for Financial Assistance	29
Term 65.	Organizational Conflicts of Interest.....	30

These Standard Terms and Conditions apply except as modified by the Program and Award-Specific Terms and Conditions.

General

Term 1. Legal Authority and Effect

This Award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Grants and Agreements Officer.

The Recipient is free to accept or reject this Award. Either of the following constitutes the Recipient's acceptance of this Award: (1) a request to draw down DOE funds or (2) acknowledgement of the award documents by the Recipient's authorized representative through the electronic system used by DOE, which is currently FedConnect.

Term 2. Incorporation by Reference and Definitions

The following are incorporated into this Award by reference:

- Financial Assistance Regulations: [Title 2](#) Subtitle A OMB Guidance for Federal Financial Assistance of the CFR, including Chapter 2 [2 CFR Part 200](#) (effective October 1, 2024), and [2 CFR Part 910](#).
- The Reporting of Matters Related to Recipient Integrity and Performance Requirements Term in [Appendix XII of 2 CFR Part 200](#).
- National Policy Requirements, available at <https://www.energy.gov/oced/award-negotiations>.

For the purposes of the Award, the following definitions apply:

“Disadvantaged communities” means the census tracts that are defined and identified by the White House Council on Environmental Quality’s Climate and Economic Justice Screening Tool (“CEJST”) and all Federally Recognized Tribes and Tribal entities. For additional information about the Justice40 Initiative and the CEJST, please reference DOE’s Justice40 General Guidance. The Justice40 Initiative directs that 40% of the overall benefits of certain federal investments flow to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution. For information about whether a particular DOE program is covered under the Justice40 Initiative, see the White House’s Justice40 Initiative webpage and DOE’s Justice40 Initiative list of covered programs.

Pursuant to Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad and Justice40 Initiative interim guidance by the White House Office of Management and Budget, White House Council on Environmental Quality, and White House Office of Domestic Climate Policy, M-21-28 and M-23-09.

“Underrepresented” refers to communities or populations sharing a particular characteristic, as well as geographic communities, that are shown to have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by communities that have been denied fair, just, and impartial treatment, which may include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; persons otherwise adversely affected by persistent poverty or inequality; women and veterans.

Term 3. Flow Down Requirement

The Recipient must apply the terms and conditions of this Award to all subrecipients (and contractors as applicable). See 2 CFR § 200.332; 2 CFR § 200.101(b).

Term 4. Resolution of Potentially Conflicting Conditions

The Recipient should promptly refer any questions about the application of a specific law, regulation, policy, term, or other requirement to the Grants and Agreements Officer for clarification. The Grants and Agreements Officer may require the Recipient to submit any of these questions in writing.

The Recipient must promptly refer any apparent inconsistency between Federal law(s) and regulation(s) and the requirements of this Award to the Grants and Agreements Officer in writing for resolution. The Recipient must provide a detailed description of the apparent inconsistency.

Term 5. Compliance with Federal, Tribal, State, and Local Laws, and Additional Tribal Considerations

The Recipient must comply with all applicable Federal, Tribal, State, and Local laws and regulations for all activities performed under this Award.

If any activities anticipated to take place under this Award could potentially impact the resources or reserved rights of Indian Tribe(s), as defined in 25 U.S.C. § 5304(e), then the Recipient agrees to develop and maintain active and open communications with the potentially impacted Indian Tribe(s), during the period of performance of the Award, and, if necessary, after the end of the Award.

The Recipient must obtain approval by DOE before any activities take place that could impact Tribal resources or reserved rights, including but not limited to lands, cultural sites, sacred sites, water rights, mineral rights, fishing rights, and hunting rights. The Recipient must coordinate with DOE on all Tribal interactions. DOE will determine if formal government-to-government consultation is needed, and if so, DOE will conduct that consultation.

Term 6. Permits and Approvals

The Recipient is required to obtain and maintain all applicable permits, licenses, authorizations, and approvals for activities under this Award.

Term 7. Senior and Key Personnel

The Recipient must obtain prior written approval from the Grants and Agreements Officer for any changes of senior and key personnel as listed in the Assistance Agreement. The Recipient must submit the request at least 30 calendar days prior to the requested effective date of the change, or immediately if the change will occur within 30 days.

Term 8. Project Management Plan

The Recipient must develop and regularly maintain, update, and implement the Project Management Plan.

Term 9. Community Benefits Plan Implementation

The Recipient must implement the community benefits plan objectives and commitments.

DOE review, comments, or feedback provided to the Recipient do not constitute an endorsement of any specific elements in the proposed approach and such feedback should not be referenced or used in marketing or promotional materials.

Term 10. Cybersecurity Plan

The Office of Cybersecurity, Energy Security, and Emergency Response (“**CESER**”) is responsible for coordinating cybersecurity project plans for certain Infrastructure Investment and Jobs Act (“**IJA**”) provisions. CESER may coordinate with DOE National Laboratory Subject Matter Experts to provide support activities to help the Recipient maintain or improve the project’s cybersecurity over its lifecycle.

The Recipient is responsible for maintaining and improving the project’s cybersecurity during the life of the Award. The Recipient must submit a Cybersecurity Plan unless otherwise specified in the Program and Award-Specific Terms and Conditions.

DOE may require the Recipient to respond to DOE feedback on the Cybersecurity Plan, submit updates or revisions to the Cybersecurity Plan, and attend Cybersecurity Plan lifecycle support meetings with DOE.

The Recipient must submit the Cybersecurity Plan and any updates or revisions to the Cybersecurity Plan securely in the form and manner specified by DOE.

DOE review, comments, or feedback provided to the Recipient do not constitute an endorsement or approval of any specific elements within the Cybersecurity Plan or the proposed security approach and 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 as described in Pub. L. 117-58 § 41026, 42 U.S.C. § 18725.

Term 11. Project and Budget Changes

The Recipient must obtain prior written approval from the Grants and Agreements Officer for project and budget changes as stated in 2 CFR § 200.308.

In addition, per 2 CFR § 200.308(i) DOE is electing to restrict the transfer of funds among direct cost categories. The recipient is required to receive prior approval from DOE if the cumulative amount of the transfer exceeds or is expected to exceed 10 percent of the total budget for the budget period, including cost share, as last approved by DOE.

Term 12. Pre-Procurement Reviews

Prior to executing a contract as described in 2 CFR § 200.325(b)(1)-(5), the Recipient must provide DOE all relevant procurement documents related to that contract. Relevant procurement documents include, but are not limited to, a description of the supplies or services required, proposed type of contractual arrangement to be issued, requests for proposals, invitations for bid, cost estimates, proposals or bids, and price or cost analysis of proposals or bids.

DOE may require changes or incorporation of DOE feedback prior to executing the contract. DOE review does not constitute a determination by DOE of the allowability of any cost under the contract. DOE will not review contracts for legal sufficiency.

The Recipient is exempt from the pre-procurement review in 2 CFR § 200.325(b) if DOE determines that the Recipient's procurement systems comply with the standards of 2 CFR Part 200 Subpart D.

The Recipient may request that DOE review its procurement system consistent with 2 CFR § 200.325(c)(1). The Recipient may self-certify its procurement system consistent with 2 CFR § 200.325(c)(2).

Term 13. Subawards

The Recipient is required to obtain prior written approval from the Grants and Agreements Officer prior to issuance of any subaward. Approvals will be listed in the Program and Award-Specific Terms and Conditions.

These requests must be in writing, and must, at a minimum, include the following:

1. A detailed description of the work to be performed, the service(s) to be provided, and/or the equipment to be purchased;
2. Budget and budget justification;
3. Cost share commitment letter if the subrecipient is providing cost share;
4. A completed Environmental Considerations Summary or similar document or a statement that such documents are inapplicable;
5. An assurance that the subrecipient is not a debarred or suspended entity;
6. An assurance that all required Award provisions will be flowed down in the resulting subrecipient agreement(s); and
7. An assurance that no potential, 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. The existence of a "covered relationship" as defined in 5 CFR § 2635.502 between a member of the Recipient's ownership or senior management and a member of a subrecipient's ownership or senior management creates an apparent conflict of interest. In such an event, the Recipient must notify the Grants and Agreements Officer and provide detailed information, justification, and mitigation measures to ensure there is no actual conflict of interest.

The Recipient must also notify the Grants and Agreements Officer of any new subrecipient agreement with:

- a. an entity that is owned or otherwise controlled by the Recipient;

- b. an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient; or
- c. an entity that is owned or otherwise controlled by a board member, principal, or executive of the Recipient.

The Recipient is responsible for complying with 2 CFR § 200.332. The Recipient is responsible for monitoring the activities of all subrecipients as necessary to ensure that the subaward is used for authorized purposes and is in compliance with applicable laws, regulations, and the terms and conditions of the subaward. The Recipient is also responsible for ensuring that subrecipients maintain all necessary documentation for the same retention period as the Recipient's retention period. The Recipient must make all documentation available to DOE upon request. The Recipient shall include subaward activities in the project reports that are submitted to DOE.

Term 14. Go/No-Go Reviews and Continuation Decisions

The Recipient must submit an application to continue to the next Budget Period in the Award ("**Continuation Application**"). The Grants and Agreements Officer will communicate the requirements for the continuation application in writing approximately 180 calendar days before the end of the Budget Period. The Recipient must submit its continuation application at least 120 calendar days before the end of the Budget Period. The Grants and Agreements Officer may modify these timeframes as appropriate.

A. Continuation Application Requirements

The continuation application requirements may include, but are not limited to, the following:

1. A report on the Recipient's progress towards meeting the objectives, milestones, and deliverables of the Award and that explains how the Recipient is addressing any significant findings, conclusions, or developments.
2. An estimate of any balance not drawn down at the end of the Budget Period. If the remaining balance is estimated to exceed 20 percent of the total funds available for the Budget Period, the Recipient must provide an explanation of why the unused funds have not been drawn down, and whether and how the Recipient proposes to use the funds in subsequent Budget Periods.
3. A detailed budget and supporting justification for the upcoming Budget Period, which may include subrecipient budgets and justifications, as applicable.
4. An updated Project Management Plan and associated attachments for the next Budget Period.
5. Updated models and analyses, including but not limited to, financial models, techno-economic analyses, and life-cycle analyses with clear identification of significant changes or refinements.
6. Updated engineering designs and evaluations.
7. Information pertaining to any other requirements identified in the Award.

DOE may further elaborate on continuation requirements in the Program and Award-Specific Terms and Conditions.

DOE will conduct a Go/No-Go Review of the Recipient's application and performance under the Award to date at the end of each Budget Period to inform its decision on whether to fund the Award in the next Budget Period ("**Continuation Decision**"). DOE's continuation decision is contingent upon:

1. The Recipient submitting a continuation application;
2. Availability of federal appropriations, program authority, and future-year budget authority for the purpose of the program;
3. Satisfactory performance, including the Recipient's progress on project objectives and identified milestones and deliverables, and consideration of the project's cost/performance index and schedule/performance index;
4. The Go/No-Go Review Criteria specified in the Award;
5. The Recipient's submittal of required information and reports;
6. The Recipient's compliance with the terms and conditions of the Award;
7. The Recipient meeting the cost share requirements for the current Budget Period and providing evidence that sufficient funds are available to meet the cost share requirements for subsequent Budget Periods as well as demonstrating access to any required reserves; and
8. The project continuing to support DOE's programmatic goals and be economically viable.

As a result of this review, DOE, in its sole discretion, may choose to: (1) fund the Award in the next Budget Period; (2) fund the Award in the next Budget Period with additional conditions or requirements; or (3) not fund future Budget Periods of the Award. DOE will communicate its continuation decision in writing. If DOE chooses to fund the next Budget Period, it will update the Award to reflect the revised funding level, Budget Period, milestones, deliverables, and any other changes. Each decision whether to authorize and fund activities in the next Budget Period is separate and distinct and the Recipient has no entitlement to any authorization or funding of activities beyond the current Budget Period.

A decision not to fund future Budget Periods of the Award is distinct from termination of the Award under the Cooperative Agreement Termination Standard Term and Condition and 2 CFR § 200.340.

Financial

Term 15. Cost Sharing

A. Recipient Cost Sharing Obligations

The Recipient must provide at least its share of total project costs ("**Recipient cost share**") for the entire Period of Performance of the Award and for each Budget Period as specified in the Award. DOE's contribution of funds for the entire Period of Performance of the Award and for each Budget Period is limited as specified in the Award. DOE will not provide funding in addition to what is specified in the Award and will not move DOE funding anticipated for any future Budget Period into the current Budget Period.

B. Cost Sharing Records

The Recipient must retain records of all project costs that are claimed as Recipient cost share as well as records of costs to be paid by the Government. These records are subject to audit. If the Recipient cost share includes in-kind contributions, the Recipient must document the basis for determining the valuation for the in-kind contributions.

C. Inability to Meet Cost Sharing Obligations

If the Recipient determines that it is or may become unable or unwilling to meet its cost sharing obligations, the Recipient must notify the Grants and Agreements Officer in writing immediately. The notification must include at least the following information: (1) whether the Recipient intends to continue with the Award, and (2) if the Recipient intends to continue with the Award, a plan for how the Recipient will provide (and secure replacement funding for, if applicable) the Recipient cost share.

Should DOE agree to the Recipient's plan, the Grants and Agreements Officer will modify the Award accordingly, including, if appropriate, adjusting the total amount of DOE funding. If DOE finds the Recipient's proposed plans unacceptable, it may terminate or decide not to continue funding the Award.

If the Recipient fails to meet its cost sharing obligations, DOE may recover the amount of funds under this Award needed to satisfy cost sharing requirements.

Term 16. Refund Obligation

The Recipient must refund any excess payments received from DOE, including any costs determined unallowable by the Grants and Agreements Officer.

Term 17. Allowable Costs

DOE determines the allowability of costs in accordance with 2 CFR Part 200 and 2 CFR Part 910. 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 appropriate cost principles. Upon DOE request, the Recipient must provide such records to DOE. These records are subject to audit. The Recipient's failure to provide DOE adequate supporting documentation may result in a determination by the Grants and Agreements Officer that those costs are unallowable.

Term 18. Program Income

The Recipient must request prior written approval from the Grants and Agreements Officer to use program income to increase the total amount of funds committed to the Award or to meet its cost share obligations, in accordance with 2 CFR § 200.307. Tax credits are not considered program income.

Term 19. Insolvency, Bankruptcy, or Receivership

The Recipient must immediately, but no later than five (5) calendar days after, notify the Grants and Agreements Officer of the occurrence of any of the following events: (i) filing by the Recipient or its parent entity(ies) of a voluntary case seeking liquidation or reorganization under the Bankruptcy Code (11 USC §§ 101-1532); (ii) the Recipient's consent to the institution of an involuntary case under the Bankruptcy Code against the Recipient or its parent entity(ies); (iii) the filing of any similar proceeding for or against the Recipient or its parent entity(ies), or its or their consent to the dissolution of, winding-up or readjustment of debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the Recipient or its parent entity(ies) under any other applicable state or Federal law; or (iv) insolvency of the Recipient or its parent entity(ies) due to the inability to pay debts generally as they become due.

Term 20. Audits

A. Annual Independent Audit (Single Audit or Compliance Audit)

The Recipient must comply with the annual independent audit requirements in 2 CFR Part 200 Subpart F for entities other than for-profit organizations ("**Single Audit**") and 2 CFR Part 910 Subpart F for For-Profit Organizations ("**Compliance Audit**").

The annual independent audits are separate from Government-initiated audits discussed in part B of this Audits Standard Term and Condition.

To minimize expense, the Recipient may conduct a Single Audit, Compliance Audit, and/or Incurred Cost Audit in conjunction with its annual audit of financial statements. However, the annual audit of financial statements will not be accepted as a substitute for the Single Audit, Compliance Audit, or Incurred Cost Audit.

B. Government-Initiated Audits

The Recipient must provide any information, documents, site access, or other assistance required by DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office, Department of Justice) 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 and 2 CFR Part 910, DOE may audit the Recipient's financial records or administrative records relating to this Award at any time, including records of subrecipients. Government-initiated audits under this Award are generally paid for by DOE. Government-initiated audits can include but are not limited to accounting system audits and incurred cost audits.

Upon completion of an audit, the Recipient may be required to refund to DOE any payments for costs that were determined to be unallowable or may provide a corrective action plan. 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 government-initiated audits and will minimize interference with ongoing work to the extent practicable.

C. Accounting System Audit

In accordance with 2 CFR Part 200 and 2 CFR Part 910, DOE reserves the right to initiate an accounting system audit. The Recipient is required to maintain an accounting system with records that adequately reflects the costs charged to DOE and the nature and extent of the cost contribution. DOE may require the accounting system audit anytime during the Period of Performance. DOE will make reasonable efforts to notify the Recipient prior to any accounting system audit. DOE will cover the cost of any accounting system audits.

D. Incurred Cost Audit and Final Incurred Cost Audit

In accordance with 2 CFR Part 200 and 2 CFR Part 910, DOE reserves the right to initiate an incurred cost audit on this Award to monitor project costs. The incurred cost audit may be required annually, during, or after a specific phase of the project (e.g., construction). DOE will make reasonable efforts to notify the Recipient prior to any incurred cost audit. DOE will cover the cost of any incurred cost audit.

If the final incurred cost 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 incurred cost audit.

Such notification must be in writing and must: (i) specifically set out the details of the occurrence of an event referenced in the above paragraph; (ii) provide the facts surrounding that event; and (iii) provide a discussion of the impacts such event may have on the activities funded by this Award.

Upon the occurrence of any of the events described in the first paragraph of this term, DOE reserves the right to conduct a review to determine the Recipient's compliance with the requirements of the Award. This includes, but is not limited to, DOE review of any records related to cost share, progress toward project objectives, submission of required reports, and other records DOE deems relevant.

Term 21. Contingency

The Recipient must account for reasonably foreseeable potential risks, uncertainty of estimates, and cost overruns in its budget estimates.

Administrative

Term 22. Independent Cost Reviews and Independent Cost Estimates

DOE may conduct Independent Cost Reviews (“**ICR**”) and Independent Cost Estimates (“**ICE**”) or other cost estimate reviews to assess and validate the Recipient's cost estimates at any time during the Award.

The Recipient must develop its cost estimates consistent with the following standards and guidance as appropriate, and DOE will use these standards and guidance in its evaluation of Recipient cost estimates:

1. Association for the Advancement of Cost Engineering (“**AACEI**”) Recommended Practice (“**RP**”) 17R-97, Cost Estimate Classification System;

2. AACEI RP 18R-97, Cost Estimate Classification System – as Applied in Engineering, Procurement, and Construction for the Process Industries; and
3. Government Accountability Office (“GAO”) Guide GAO-20-195G, Cost Estimating and Assessment Guide, March 1, 2020.

If there is a potential conflict between these guidance documents, the Recipient should follow the GAO Cost Estimating and Assessment Guide as appropriate.

DOE will require the Recipient to submit information needed for DOE to conduct an ICR, ICE, or other cost estimate review. DOE will provide written instructions on required submissions. DOE may require information including, but not limited to, the following:

1. Executive Summary
2. Estimate Purpose
3. Technical Baseline Description
4. Cost Estimating Plan and Cost Model
5. Work Breakdown Structure (“WBS”) and WBS Dictionary
6. Current Schedule and Cost Estimate files with reference data
7. Basis of Estimate, including supporting methodologies and assumptions
8. Sensitivity Analysis
9. Current Risk Register, including cost and schedule risk and uncertainties.

Term 23. Recipient Inspection Requirements

The Recipient is responsible for performing any needed inspections, tests, start-up, commissioning, and other related activities under this Award.

The Recipient must maintain inspection system(s) acceptable to DOE that covers the activities under this Award. DOE may perform technical inspections and specialized inspections or tests as DOE deems necessary. DOE will make reasonable efforts to ensure these inspections or tests do not interfere with or unduly delay project work. The Recipient is required to maintain complete records, including of inspections, tests, start-up, commissioning, and operations and provide those records when requested by DOE.

Term 24. Independent Engineering Reviews and Assessments

DOE may, with prior notification, conduct independent engineering reviews and assessments of the Award. DOE may use DOE and/or DOE contractor personnel to conduct these independent engineering reviews and assessments. The Recipient must cooperate with the conduct of these reviews and assessments by providing to DOE and/or DOE’s contractor access to all facilities and information that are required to successfully complete these reviews and assessments. DOE shall ensure that all DOE contractor personnel are subject to confidentiality and non-disclosure requirements prior to receiving Recipient information. The Recipient is responsible for providing all required training for site or system access. DOE and/or its contractor personnel are responsible for completing all required training.

Term 25. Recipient Administrative Organizational Reviews

DOE may conduct Recipient Administrative Organizational Reviews to review the project and management control systems and to provide technical assistance.

Term 26. Record Retention and Access

The Recipient must retain and allow access to records relating to this Award consistent with 2 CFR § 200.334 through 2 CFR § 200.338.

Term 27. Modifications

The Grants and Agreements Officer must unilaterally modify the agreement where required by law. The Grants and Agreements Officer may also unilaterally modify the Award for administrative matters such as for updating regulatory citations, lines of accounting, and DOE contacts. Other types of modification to the Award will be made only by mutual agreement. Drawing down DOE funds or acknowledgement of the Award documents by the Recipient's authorized representative through the electronic system used by DOE, which is currently FedConnect, constitutes acceptance of the modification.

Term 28. At-Risk Oversight and Monitoring

DOE reserves the right to increase oversight and monitoring of the Recipient based on factors including, but not limited to, schedule or cost performance, technology or supply chain risks, environmental or community impacts, meeting cost sharing requirements, obtaining project financing, or management of the project. DOE may require the Recipient to provide additional information and may modify existing requirements or impose additional requirements including, but not limited to, those listed in 2 CFR § 200.208(c) and 2 CFR § 910.372.

DOE may also terminate or partially terminate the Award or decide not to fund future Budget Periods under the Award without first increasing oversight or monitoring or imposing additional requirements.

Term 29. Government Access to Award Information

The Recipient must provide DOE, including designated DOE contractors, unfettered access to all facilities, documents, papers, personnel, accounts, books, records, and other supporting documentation and information that are pertinent to the Award. DOE will make reasonable efforts to ensure this access does not interfere with or unduly delay project work.

The access may include, but is not limited to, the following:

1. Facility sites before, during, and after construction
2. Contractor component manufacturing facilities
3. Facility sites during operations
4. Drawings and specifications
5. Construction and execution plans
6. Resource loaded schedules
7. Design functions and requirements for the final site design review

8. Risk management plans
9. Value management and engineering studies and/or plans
10. Acquisition strategies
11. Project controls including earned value management systems
12. Qualifications of the integrated project team
13. Financial/cost share strategy for funding the construction project
14. Quality assurance and quality control plans
15. Financial modeling and financial cost data
16. Project agreements and contracts
17. Community benefits activities and proceedings
18. Facility start-up and commissioning plans
19. Facility operation plans
20. Facility operating costs
21. Decommissioning plans
22. Environmental information
23. Security and cybersecurity plans
24. Technical performance data and supporting information
25. Engineering design documentation and supporting information
26. Data strategy and management plan
27. Economic data and analyses
28. Lifecycle emissions and environmental impact data, analyses, and supporting information
29. Community, workforce, local and regional economic impact data, analyses, and supporting information

Term 30. Cooperative Agreement Termination

Pursuant to 2 CFR § 200.340(a), this Award may be terminated in whole or in part as follows:

1. By DOE, if the Recipient fails to comply with the terms and conditions of this Award;
2. By DOE, to the greatest extent authorized by law, if the Award no longer effectuates the program goals or agency priorities;
3. By DOE with consent of the Recipient, in which case the two parties must agree in writing on the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
4. By the Recipient upon sending to the Grants and Agreements Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The effective date must be at least 30 calendar days after the date of the written notification. However, if DOE determines in the case of partial termination that the reduced or modified portion of the Federal Award or subaward will not accomplish the purposes for which the Federal Award was made, DOE may terminate the Award in its entirety.

Disputes and appeals are governed by 2 CFR § 910.128. If the Award is terminated or partially terminated, both DOE and the Recipient remain responsible for compliance with the requirements in 2 CFR § 200.344 and 2 CFR § 200.345.

Term 31. Budget Period Modifications and Extensions

Prior written approval from the Grants and Agreements Officer is required for modifications to any Budget Period or extension of the Period of Performance. The Recipient must request the modification at least 90 calendar days before the modification would take effect. The Grants and Agreements Officer will promptly respond to such requests. If approved, the change will be implemented by a modification to the Award.

Term 32. Insurance Coverage

The Recipient must at minimum obtain and maintain insurance consistent with the requirements in 2 CFR § 200.310 and 2 CFR § 910.360(e) but may choose to obtain and maintain additional insurance. The Grants and Agreements Officer may also require the Recipient to obtain and maintain additional insurance related to the Award.

Term 33. Liability

The Recipient agrees not to seek to hold the United States (“US”) Government liable, or to seek contribution from the US Government for any liabilities, including but not limited to environmental liabilities and third party liabilities resulting from or arising out of any activities undertaken pursuant to the Award, except to the extent that such liability results from a negligent or wrongful act or omission of the US Government or to the extent such liability may be covered by applicable allowable cost provisions and then only to the extent of available funds obligated by the US Government to the Award.

Term 34. Indemnity

To the extent allowed by applicable law, 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 any activities undertaken pursuant to the Award, except to the extent that such liability results from a negligent or wrongful act or omission of DOE officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions. The parties shall inform each other as soon as practicable of any suit or action alleging an indemnifiable claim.

Term 35. Decontamination and/or Decommissioning Costs

The US Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (“D&D”) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to activities under this Award either before or after the effective date of this Award.

Term 36. Contaminated Sites

The Recipient must notify DOE if any activities under the Award will occur on previously contaminated or potentially contaminated sites with hazardous substances, including, but not limited to, Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”) “Superfund sites” or properties where redevelopment or reuse may be complicated by hazardous substance contamination (“Brownfield sites”). The Recipient is solely responsible for handling and disposal of any hazardous substances and wastes arising from activities under this Award.

Term 37. Publications, Public Relations Activities, and Design Elements

The Recipient must follow the [OCED Communications Guidelines](#) and the [OCED Engagement Guidelines](#) when issuing publications, presentations, public relations activities, news releases, and engaging with Congress arising out of, or relating to, work performed under this Award, whether copyrighted or not.

The Recipient must provide DOE access to, either electronically or in paper form, a copy of every publication or presentation of material based on or developed under this Award, clearly labeled with the Award number and other appropriate Award identifying information, at least seven (7) calendar days prior to publication or public presentation.

Use of the OCED logo, name, or brand in all applications including but not limited to design, facility signage, and other markings including DOE Investing in America signage during and after construction must be in accordance with the [OCED Communications Guidelines](#) and the [OCED Engagement Guidelines](#). The Recipient must consult with the Grants and Agreements Officer on the cost, timeline, design, and placement of any works using the OCED logo or name in any location, physical or digital, prior to use.

Term 38. System for Award Management (SAM.gov) and Universal Identifier Requirements

A. Requirement for System for Award Management.

Unless exempt from this requirement under 2 CFR § 25.110, the Recipient must maintain a current and active registration in SAM.gov. The Recipient’s registration must always be current and active until the Recipient submits all final reports required under this Federal Award or receives the final payment, whichever is later. The Recipient must review and update its information in SAM.gov at least annually from the date of its initial registration or any subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the Recipient’s immediate and highest-level owner and subsidiaries and providing information about the Recipient’s predecessors that have received a Federal Award or contract within the last three years.

B. Requirement for Unique Entity Identifier (UEI).

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

1. Must notify potential subrecipients that no entity may receive a subaward until the entity has provided its UEI to the Recipient.

2. Must not make a subaward to an entity unless the entity has provided its UEI to the Recipient. Subrecipients are not required to complete full registration in SAM.gov to obtain a UEI.

C. Definitions.

For the purposes of this Award term:

1. **System for Award Management (“SAM”)** means the Federal repository into which a Recipient must provide the information required for the conduct of business as a Recipient. Additional information about registration procedures may be found in [SAM.gov](https://www.sam.gov/) (currently at <https://www.sam.gov/>).
2. **Unique entity identifier** means the universal identifier assigned by SAM to uniquely identify an entity.
3. **Entity** is defined at 2 CFR § 25.400 and includes all of the following types as defined in 2 CFR § 200.1:
 - a. Non-Federal entity;
 - b. Foreign organization;
 - c. Foreign public entity;
 - d. Domestic for-profit organization; and
 - e. Federal agency.
4. **Subaward** has the meaning given in 2 CFR § 200.1.
5. **Subrecipient** has the meaning given in 2 CFR § 200.1.

Term 39. Corporate Felony Convictions and Federal Tax Liability Assurances

If a Recipient is organized as a corporation and has filed articles of incorporation in any of the 50 states, the District of Columbia, or the territories of the United States, including both for-profit and non-profit organizations but not foreign corporations, then the Recipient hereby attests that its corporation has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

The Recipient further attests that its corporation does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

Term 40. Conference Spending

The Recipient must not expend any funds on a conference that is not directly and programmatically related to the purpose for which the cooperative agreement was awarded that would defray the cost to the United States Government or 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 of 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 41. Risk Mitigation and Due Diligence Reviews

DOE may conduct ongoing due diligence reviews, through Government resources, including 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 that an individual or entity not participate in the Award.

Term 42. Changes to Recipient's Board of Directors

The Recipient must notify the Grants and Agreements Officer no later than fifteen (15) business days of learning of any changes to the Recipient's board of directors, including additions to the number of directors, the identity of new directors, as well as each new director's citizenship and shareholder affiliation (if applicable).

Each notification must 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. This notification requirement applies only to the Recipient's Board of Directors.

Term 43. Disclosure of Connections with Foreign Countries of Risk

The Recipient must notify the Grants and Agreements Officer no later than fifteen (15) business days of learning of any of the following connections in relation to the Recipient or any subrecipients:

1. Any current or pending subsidiary, foreign business entity, or offshore entity that is based in or funded by a foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, joint venture or joint venture-like arrangement with an entity owned by a foreign country of risk or foreign entity based in a foreign country of risk;
3. Any current or pending change in ownership structure of the Recipient or subrecipients that increases foreign ownership related to a foreign 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 an affiliation with a foreign country of risk; and
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk.

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

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

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

Term 44. Foreign Commitments in Support of the Award

The Recipient must provide DOE with advanced written notice at least 30 calendar days before any potential commitment with foreign entities, organizations, or governments in connection with the Award. Commitments include any contractual, financial, or other binding commitment in which the Recipient, a subrecipient or a contractor will be obligated or entitled to provide or receive a sensitive service, product, or information resource. DOE may prohibit or impose conditions on the Recipient relating to such commitments.

The Recipient must also provide DOE with a written list of all existing foreign commitments in which it has entered in connection with this Award.

Term 45. Waiver Requests – Foreign Entity Participation as a Recipient or Subrecipient

The Recipient and all subrecipients must be organized, chartered, or incorporated (or otherwise formed) under the laws of a state or territory of the United States; have majority domestic ownership and control; and have a physical location for business operations in the United States. To request a waiver of this requirement for the Recipient and any subrecipients, the Recipient must submit a written waiver request.

The waiver must demonstrate to the satisfaction of DOE that the foreign entity's participation would further the purposes of the FOA and is otherwise in the best interest of the DOE programmatic objectives.

A foreign entity waiver request must include the following:

1. The entity's name, point of contact, and proposed type of involvement in the project;
2. The entity's country of incorporation, the extent of ownership/level of control by foreign entities, whether the entity is state owned or controlled, a summary of the ownership breakdown of the foreign entity and the percentage of ownership/control by foreign entities, foreign shareholders, foreign state or foreign individual(s) (DOE may require capitalization table);
3. Rationale for proposing that a foreign entity participate;
4. Description of how the foreign entity's participation is essential to the project;
5. Description of the likelihood of Intellectual Property being created from the work and the treatment of any such IP; and
6. Countries where the work will be performed. If any work is proposed to be conducted outside the United States and the Recipient does not already have a waiver of the Performance of Work in the United States requirement, the Recipient must also submit a waiver request regarding the Performance of Work in the United States requirement.

DOE may require additional information in considering a waiver request. DOE's decision regarding a waiver request is not appealable.

Term 46. Foreign National Participation

A “foreign national” is defined as any person without U.S. citizenship or nationality (may include a stateless person).

If the Recipient (including any of its subrecipients and contractors) anticipates involving foreign nationals in the performance of the Award, the Recipient must, upon DOE’s request, provide DOE with specific information about each foreign national to ensure compliance with the requirements for participation and access approval. The volume and type of information required may depend on various factors associated with the Award. The DOE Grants and Agreements Officer will notify the Recipient if this information is required.

DOE may elect to deny a foreign national’s participation in the Award, in its discretion, at any point during the performance of the Award. Likewise, DOE may elect to deny a foreign national’s access to a DOE sites, information, technologies, equipment, programs, or personnel. DOE’s determination to deny participation or access is not appealable.

Term 47. Waiver Requests – Performance of Work in the United States

All work (including but not limited to purchases and labor) performed under this Award must be performed in the United States, unless otherwise approved as part of the original application, or during performance, by DOE.

To seek a waiver of the Performance of Work in the United States requirement, the Recipient must submit a waiver request to the Grants and Agreements Officer. A waiver request must satisfactorily demonstrate that a waiver would further the purposes of the Notice of Funding Opportunity (“**NOFO**”) and is otherwise in the best interest of the DOE programmatic objectives. A request for a foreign work waiver must include the following:

1. A description of the work proposed to be performed outside of the United States;
2. An explanation of how the foreign work is essential to the project;
3. The name of the entity that would perform the foreign work and information about the entity(ies) involved in the work proposed to be conducted outside of the United States (e.g., the entity seeking a waiver and the entity(ies) that will conduct the foreign work).
4. The rationale for performing the work outside of the United States (“foreign work”) and why the work cannot be done within the US;
5. A description of the likelihood of Intellectual Property being created from the foreign work and the treatment of such IP;
6. The total estimated cost (DOE and Recipient cost share) of the proposed foreign work;
7. The country(ies) in which the foreign work is proposed to be performed; and
8. Timeline by which the waiver must be approved to support project schedules.

DOE may require additional information in considering a waiver request. DOE’s decision regarding a waiver request is not appealable.

If the Recipient fails to comply with the Performance of Work in the United States requirement, DOE may deny reimbursement for the work conducted outside of the United States and such costs may not be recognized as allowable cost share. The Recipient is responsible for any work performed outside the United States without a waiver, regardless of whether the work is performed by the Recipient, subrecipients, contractors, or other project partners.

Term 48. Prohibition Related to Foreign Government-Sponsored Talent Recruitment Programs

A. Prohibition

Persons participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk are prohibited from participating in this Award. The Recipient must exercise ongoing due diligence to reasonably ensure that no individuals participating in the DOE-funded award are participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy.

Further, the Recipient must notify DOE within five (5) business days upon learning that an owner of the Recipient or subrecipient or individual on the project team is or is believed to be participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk. DOE may modify and add requirements related to this prohibition to the extent required by law.

B. Definitions

For purposes of this Award, these definitions apply:

1. **Foreign Government-Sponsored Talent Recruitment Program.** An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose.

Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

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

Term 49. Reporting Requirements

The Recipient must comply with the reporting requirements for this Award including, but not limited to, the requirements identified in the Federal Assistance Reporting Checklist. (e.g. 2 CFR 170 Appendix A)

Term 50. Property Standards

The Recipient must comply with the applicable property standards regulations at 2 CFR §§ 200.310-16 and 2 CFR § 910.360. Pursuant to Section 309 of Division D of the Consolidated Appropriations Act of 2023 (Pub. L. No. 117-328), for energy development, demonstration, and deployment programs, DOE may vest unconditional title or other property interests acquired under projects in the Recipient, a subrecipient, or successor in interest, including the United States, at the conclusion of the Award period.

Term 51. Real Estate Transaction Approval

Should the Recipient propose to acquire real property under the Award, the Recipient must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601 *et seq.*) and implementing regulations at 49 CFR Part 24 as applicable. At least 60 calendar days prior to consummating a real property acquisition under the Award, the Recipient must submit the proposed real estate transaction to the Grants and Agreements Officer for review and approval.

Should the Recipient propose that a project under the Award be located on DOE or other Federally-controlled land, authorization from the appropriate agency will be required. Such authorization may take the form of a lease, permit, easement, right-of-way, license, agreement, or any other appropriate legal instrument. Any such instrument will be subject to normal DOE real estate activity rules and procedures.

The Recipient must contact the Grants and Agreements Officer at least 150 calendar days in advance of the real property need date for guidance and to begin making the arrangements for the authorization.

National Policy Requirements

Term 52. Davis-Bacon Act Requirements

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**”).

The Recipient shall provide a 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 funding under the Award are paid or will be paid wages at rates not less than those prevailing on a project of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code.

The Recipient must comply with all DBA 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 Grants and Agreements 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 Grants and Agreements 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 in accordance with the reporting instructions the Federal Assistance Reporting Checklist.

The Recipient must undergo DBA compliance training must maintain competency in DBA compliance.

The Grants and Agreements Officer will notify the Recipient of any DOE sponsored DBA 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 Recipient must ensure the timely submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act. DOE has contracted with a LCPtracker, a third-party DBA electronic payroll compliance software application. A waiver for the use of LCPtracker may be granted to a particular contractor or subcontractor if they are unable or limited in their ability to use or access the software.

A. DBA Electronic Certified Payroll Submission Waiver

A waiver must be granted before the start of work subject to DBA requirements (e.g., construction, alteration, or repair work). The Recipient does not have the right to appeal DOE's decision concerning a waiver request.

For additional guidance on how to comply with the DBA provisions and clauses, see

<https://www.dol.gov/agencies/whd/government-contracts/construction> and

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

Term 53. Export Control

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the US 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 the resulting Award.

The Recipient must immediately report to DOE any export control charges, indictments, convictions, and violations related to the project funded under this Award and any export control investigations potentially implicating any technologies or equipment under the subject Award, at the Recipient or subrecipient level, and, if the charge/indictment/investigation results in a conviction or violation, provide the corrective action(s) to prevent future violations.

Term 54. Notice Regarding the Purchase of American-Made Equipment and Products

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Award should be American-made.

Term 55. 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 as amended:

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. The Recipient is encouraged to consult [OFCCP’s Technical Assistance Guide](#) to gain an understanding of the requirements and possible actions the Recipient, subrecipient, contractors, and subcontractors must take.

For a construction project valued at \$35 million or more and lasting more than one year, the Recipient and its contractors or subrecipients may be selected by the DOL OFCCP to participate in the *Mega Construction Project Program*. If selected by the DOL OFCCP, DOE, under relevant legal authorities including Sections 205 and 303(a) of Executive Order 11246, will require participation as a condition of the Award. This program offers extensive compliance assistance with Executive Order 11246. For more information regarding this program, see <https://www.dol.gov/agencies/ofccp/construction/mega-program>.

Term 56. Human Subjects Research

Research involving human subjects, biospecimens, or identifiable private information conducted with DOE funding is subject to all applicable laws, including the requirements of [DOE Order 443.1C](#), Protection of Human Subjects Research, 45 CFR Part 46, Protection of Human Subjects (subpart A which is referred to as the “Common Rule”), and 10 CFR Part 745, Protection of Human Subjects. Additional information on the DOE Human Subjects Research Program can be found at: <https://science.osti.gov/ber/human-subjects>.

Term 57. Environmental, Safety, and Health and Performance of Work at DOE Facilities

For activities under the Award performed at a DOE owned or controlled site, the Recipient agrees to comply with all Federal and State Environmental, Safety, and Health (“ES&H”) regulations and with all other ES&H requirements of the operator of such site. Prior to the performance of any portion of the work under this Award at a DOE owned or controlled site, the Recipient shall contact the site facility manager for information on DOE and site-specific ES&H regulations. The Recipient shall apply this term to its subrecipients and contractors.

Term 58. Lobbying Restrictions

The Recipient agrees that none of the funds obligated for the Award shall be expended, directly or indirectly, to influence in any manner a Member of Congress, a jurisdiction, or an official of any government on action on any legislation, law, ratification, or appropriation matters pursuant to 18 USC § 1913. This restriction is in addition to those prescribed elsewhere in statute or regulation.

Term 59. National Historic Preservation Act Requirements

DOE must comply with the National Historic Preservation Act (“NHPA”), 54 USC § 306108 *et seq.*, which requires federal agencies to consider the effects of any undertaking (Federally funded or assisted projects and activities) on historic properties that are listed in or eligible for listing in the National Register of Historic Places prior to the expenditure of Federal funds.

The Recipient is required to cooperate with DOE in its compliance with the requirements of Section 106 of the NHPA. The Recipient may not alter any structure or site, including any groundbreaking for any purpose, prior to the resolution of the NHPA process without DOE approval. The requirements of this part are applicable to activities funded under the Award and shall be coordinated in conjunction with DOE and, as appropriate, other federal agencies, the State Historic Preservation Officer or Tribal Historic Preservation Officer, Tribal representatives, and consulting parties.

Term 60. National Environmental Policy Act Requirements

DOE must comply with the National Environmental Policy Act (“NEPA”), 42 USC §§ 4321 *et seq.* and NEPA implementing regulations at 40 CFR Parts 1500 *et seq.* and 10 CFR Part 1021 prior to authorizing the expenditure of Federal funds. DOE is required to assess the impact of the activities authorized under this Award on the human environment and determine whether the work requires a preparation of an Environmental Impact Statement (“EIS”), an Environmental Assessment (“EA”), or if the activities fall into a class of actions that a Federal agency has determined do not individually or cumulatively have a significant effect. The Recipient is required to provide any information, documents, site access, or other assistance requested by DOE to complete the NEPA review.

The Recipient may not start work under this Award until the OCED NEPA Compliance Officer has produced a written NEPA document or determination and the Grants and Agreements Officer has provided written authorization.

The Recipient is restricted from using Federal funds to take any action prior to authorization from the Grants and Agreements Officer. If the Recipient elects to undertake activities prior to authorization from the Grants and Agreements Officer, the Recipient does so at the risk of not receiving Federal funding for those activities and such costs may not be recognized as allowable cost share.

The Recipient agrees to:

1. Abide by the conditions, limitations, mitigation requirements, and monitoring requirements specified in the final NEPA document or determination;
2. Negotiate changes to the project schedule, costs, and/or scope as necessary to make effective the requirements or conditions in the final NEPA document or determination;
3. Allow DOE’s authorized representatives to visit the site and facilities upon notice to verify project status and compliance to include conditions and requirements in the final NEPA document or determination; and
4. Submit data or otherwise meet specified reporting requirements that may be in the final NEPA document or determination.

If the Recipient later intends to add to or modify the activities or locations as described in the approved work scope and the final NEPA document or determination, both those additions and modifications are subject to additional NEPA review and are not authorized for Federal funding until the Grants and Agreements Officer provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or change locations prior to written authorization from the Grants and Agreements Officer, the Recipient does so at the risk of not receiving Federal funding for those activities, and such costs may not be recognized as allowable cost share.

Term 61. National Security: Classifiable Information Originating Under an Award

DOE does not expect that this Award will involve classified information. Under certain circumstances, however, a classification review of information originated under the Award may be required. DOE may review information generated under this Award at any time to determine if it requires classification.

Some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may arise during the Award and require classification. If the Recipient originates information during the course of this Award that the Recipient believes requires classification, the Recipient must promptly:

1. Notify the Grants and Agreements Officer; and
2. Submit the information by registered mail directly to the Director, Office of Classification and Information, SO-10.2; U.S. Department of Energy; P.O. Box A; Germantown, MD 28075-0963, for classification review; and
3. Restrict access to the information to the maximum extent possible until the Recipient is informed that the information is not classified, but no longer than 30 days after receipt by the Director, Office of Classification and Information Control.

If DOE determines any of the information requires classification, the Recipient agrees that the DOE may terminate the Award with consent of the Recipient in accordance with 2 CFR § 200.340(a)(2). All material deemed to be classified must be forwarded to DOE in a manner specified by DOE. If DOE does not respond within the specified time periods, the Recipient is under no further obligation to restrict access to the information.

Term 62. 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 DOE activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

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

An applicant, recipient, or subrecipient of a Federal award must promptly disclose whenever, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act ([31 U.S.C. 3729-3733](#)). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity (if applicable). Recipients and subrecipients are also required to report matters related to recipient integrity and performance in accordance with Appendix XII of this part. Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

Term 63. Nondisclosure and Confidentiality Agreements Assurances

By entering into this Award, 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.

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:

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

Term 64. Interim Conflict of Interest Policy for Financial Assistance

The DOE interim Conflict of Interest Policy for Financial Assistance (“**COI Policy**”) can be found at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>. 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 key personnel who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The interim COI Policy establishes standards that provide a reasonable expectation that the design, conduct, and reporting of projects funded wholly or in part under DOE financial assistance awards will be free from bias resulting from financial conflicts of interest or organizational conflicts of interest.

The Recipient is subject to the requirements of the interim COI Policy, and the Recipient must certify that it is compliant with all requirements in the interim COI Policy. The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities, except for DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (“**FCOI**”), i.e., managed, and unmanaged/unmanageable, in its initial and ongoing FCOI reports.

Prior to award, the Recipient was required to: 1) ensure all key personnel on this Award completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed, and unmanaged/unmanageable). Within 180 calendar days of the date of the Award, the Recipient must be in full compliance with the other requirements set forth in the DOE interim COI Policy.

Term 65. Organizational Conflicts 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 immediately disclose in writing any potential or actual organizational conflict of interest to the Grants and Agreements 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](#).

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.