Department of Energy (DOE)
Office of State and Community Energy Programs (SCEP)

2023 Funding Opportunity Announcement for Energy Improvements at Nonprofits - Bipartisan Infrastructure Law (BIL) – Renew America's Nonprofits

Funding Opportunity Announcement (FOA) Number: DE-FOA-0003066
FOA Type: Initial
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Executive Summary

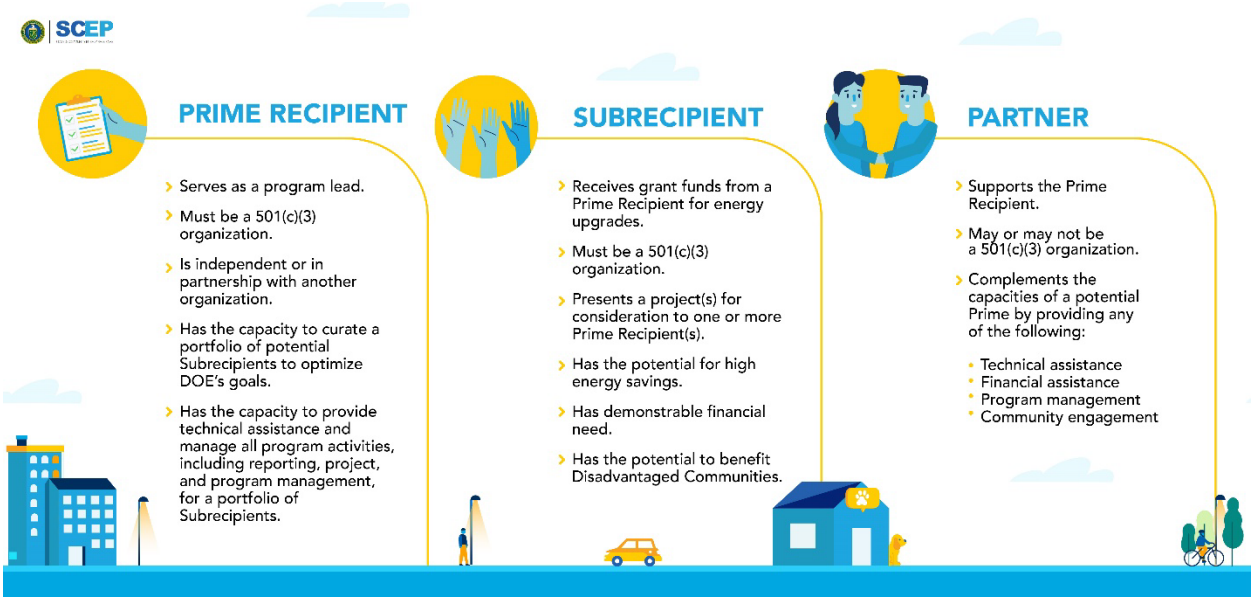
Timeline:

FOA Issue Date	5.24.2023
Informational Webinar Session 1: Details on Infrastructure Exchange	6.6.2023 2:00pm ET
Informational Webinar Session 2: Details on Infrastructure Exchange	6.8.2023 3:00pm ET
Virtual Office Hours Session 1: Details on Infrastructure Exchange	6.22.2023 1:00pm ET
Submission Deadline for Letter of Intent *(Not Required):*	6.29.2023 5:00pm ET
Virtual Office Hours Session 2: Details on Infrastructure Exchange	7.13.2023 1:00pm ET
Submission Deadline for Full Applications:	8.3.2023 5:00pm ET
Expected Submission Deadline for Replies to Reviewer Comments:	8.31.2023 5:00pm ET
Expected Date for SCEP's Selection Notifications:	10.6.2023
Expected Timeframe for Award Negotiations:	1.5.2024

Program Overview
The Renew America's Nonprofits program is made possible by Section 40542 of the Bipartisan Infrastructure Law, which provides $50,000,000 to establish a grant program focused on funding energy-efficiency improvements in nonprofit buildings. DOE is using an aggregation model for this FOA that will enable the bundling of projects into portfolios while providing technical and administrative support for retrofit projects and maximizing equitable impacts.

Under this program's aggregation model described above, "Prime recipients" and "subrecipients" must be nonprofit organizations as described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code. All renovations, repairs, or installations under this provision must be performed on a building owned and operated by a nonprofit 501(c)(3).

Proposals for this FOA will be submitted to DOE by nonprofit 501(c)(3) applicants interested in serving as "Prime recipients" and eventually assembling a portfolio of nonprofit buildings owned and operated by 501(c)(3) organizations in need of energy efficiency upgrades. Prime recipients will serve as the portfolio aggregators, recruiting eligible building projects that meet performance criteria, establishing subrecipient relationships with building owners, flowing down award terms and conditions, managing program implementation, and synthesizing the project results. Prime recipients and subrecipients must be 501(c)(3) nonprofit organizations. Prime recipients may also partner with other organization types[1] that complement their capacity to reach program goals.



Prime recipients are not expected to identify the individual subrecipient buildings that comprise their portfolios in their applications, as this may be done after selection and award. However, Prime recipients should articulate performance goals for the portfolio they plan to assemble within their application and will be held accountable to these goals should they be selected. Once portfolios are assembled and shared with DOE, selected Prime recipients will then subaward up to $200,000 to Subrecipients for individual building energy efficiency projects in their assembled portfolios. The cost share requirement for Prime recipients is 20%. The cost share requirement is required at the portfolio level and may be met by the Prime recipient independently or from an aggregation perspective by the subrecipients.

Performance-based criteria will guide the applicant review process to assist with prioritizing eligible applicants. Criteria include: Project Team and Program Plan (40%), Energy Related Impacts of Portfolios (30%), Leverage and Sustainability, (15%), and Community Benefits Plan (15%).

[1] "Project Partners" may be other than nonprofit 501(c)(3) organizations e.g., for-profit organizations, government, community partners…etc.

SCEP anticipates making approximately 5-15 awards under this FOA. SCEP may issue one, multiple, or no awards. Individual awards may vary between $3,000,000 and $9,000,000. Applicants are encouraged to submit a Letter of Intent by 5:00pm ET on the due date listed above. Letters of intent are not required; if applicants are unable to submit a letter of intent, they can still submit a full application.

Required System Registrations

- To apply to this FOA, applicants must register with and submit application materials through Infrastructure eXCHANGE at https://infrastructure-exchange.energy.gov, SCEP's online application portal.

- Applicants must designate primary and backup points-of-contact in Infrastructure eXCHANGE with whom SCEP will communicate to conduct award negotiations. If an application is selected for award negotiations, it is not a commitment to issue an award. It is imperative that the applicant/selectee be responsive during award negotiations and meet negotiation deadlines. Failure to do so may result in cancelation of further award negotiations and rescission of the selection.

- **Unique Entity Identifier (UEI) and System for Award Management (SAM)** - Each applicant (unless the applicant is excepted from those requirements under 2 CFR 25.110) is required to: (1) Be registered in the SAM at https://www.sam.gov before submitting its application; (2) provide a valid UEI number in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. DOE may not make a federal award to an applicant until the applicant has complied with all applicable UEI and SAM requirements and, if an applicant has not fully complied with the requirements by the time DOE is ready to make a federal award, DOE will determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

  NOTE: Due to the high demand of UEI requests and SAM registrations, entity legal business name and address validations are taking longer than expected to process. Entities should start the UEI and SAM registration process as soon as possible. If entities have technical difficulties with the UEI validation or SAM registration process they should utilize the HELP feature on SAM.gov. SAM.gov will work entity service tickets in the order in which they are received and asks that entities not create multiple service tickets for the same request or technical issue. Additional entity validation resources can be found here: GSAFSD Tier 0 Knowledge Base - Validating your Entity.

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I. Funding Opportunity Description

A. Background and Context

The Office of State and Community Energy Programs is issuing this Funding Opportunity Announcement (FOA), Renew America's Nonprofits. Awards made under this FOA will be funded, in whole or in part, with funds appropriated by the Infrastructure Investment and Jobs Act[2], more commonly known as the Bipartisan Infrastructure Law (BIL).

The BIL is a once-in-a-generation investment in infrastructure, designed to modernize and upgrade American infrastructure to enhance United States competitiveness, drive the creation of good-paying union jobs, tackle the climate crisis, and ensure stronger access to economic, environmental, and other benefits for historically disadvantaged communities [3]. The BIL appropriates more than $62 billion to the Department of Energy (DOE)[4] to invest in American manufacturing and workers; expand access to energy efficiency and clean energy; deliver reliable, clean, and affordable power to more Americans; and demonstrate and deploy the technologies of tomorrow through clean energy demonstrations.

As part of and in addition to upgrading and modernizing infrastructure, DOE's BIL investments will support efforts to build a clean and equitable energy economy that achieves a zero-carbon electricity system by 2035, and to put the United

[2] Infrastructure Investment and Jobs Act, Public Law 117-58 (November 15, 2021). https://www.congress.gov/bill/117th-congress/house-bill/3684. This FOA uses the more common name "Bipartisan Infrastructure Law".

[3] Pursuant to E.O. 14008 and the Office of Management and Budget's Interim Justice40 Implementation Guidance M-21-28, DOE has developed a definition and tools to locate and identify disadvantaged communities. These resources can be located at https://energyjustice.egs.anl.gov/. In accordance with M-23-09, DOE will also recognize disadvantaged communities as defined and identified by the White House Council on Environmental Quality's Climate and Economic Justice Screening Tool (CEJST), which can be located at https://screeningtool.geoplatform.gov/. DOE's Justice40 Implementation Guidance is located at https://www.energy.gov/sites/default/files/2022-07/Final%20DOE%20Justice40%20General%20Guidance%20072522.pdf.

[4] U.S. Department of Energy. November 2021. "DOE Fact Sheet: The Bipartisan Infrastructure Deal Will Deliver For American Workers, Families and Usher in the Clean Energy Future." https://www.energy.gov/articles/doe-fact-sheet-bipartisan-infrastructure-deal-will-deliver-american-workers-families-and-0

States on a path to achieve net-zero emissions economy-wide by no later than 2050"[5] to benefit all Americans.

The activities to be funded under this FOA support BIL Section 40542 and the broader government-wide approach to invest in projects that enable innovative and sustaining partnership models, leverage funding and economies of scale, and focus on disadvantaged communities and energy communities.[6]

i. Program Purpose

This FOA supports the administration goals laid out above by funding projects that reduce energy use and emissions and lower utility costs in nonprofit facilities so they can redirect savings into their mission-critical work, build organizational capacity, and further serve their communities.

Strong, healthy communities need strong nonprofits. These organizations provide a vast array of critical services to communities across America, from health care to food distribution to youth development programs. However, nonprofits are often asked to do more with less. Many eligible nonprofit organizations have struggled under increasing pressure from the COVID-19 pandemic. A 2021 national survey of 2,237 eligible nonprofit organizations showed that 75% of respondents saw increased demand for their services since the pandemic began, while almost 75% had increased expenses, almost half experienced decreases in individual and corporate donations, and 45% reported a decreased ability to meet the needs of their service populations.[7]

Connecting energy efficiency to operational savings and increased community impact is essential to organizational health but has been a missing link for most nonprofits. Energy costs are the second highest operational expense for nonprofits after salaries.[8] With over 1.4 million eligible nonprofits operating in the United States[9] that employ more than

[5] Executive Order (EO) 14008, "Tackling the Climate Crisis at Home and Abroad," January 27, 2021.
[6] Home - Energy Communities
[7] https://www.councilofnonprofits.org/thought-leadership/the-data-show-what-we-know-the-nonprofit-helpers-need-help
[8] https://www.eesi.org/articles/view/why-energy-efficiency-is-important-for-nonprofits
[9] The number of 501(c)(3)s was determined by applying filters to the data in the 4 CSV files (Northeast Area, Mid-Atlantic and Great Lakes Area, Gulf Coast and Pacific Coast Areas, and All Other). According to the information sheet provided, Subsection Codes "are the codes shown under Section 501(c) of the Internal Revenue Code of 1986, which define the category under which an organization may be exempt." Using this information, we applied

12.4 million workers[10] and provide a vast array of social benefits, the potential for energy, environmental, organizational, and community impact is significant.

As part of the whole-of-government approach to advance equity and encourage worker organizing and collective bargaining,[11,12,13] this FOA and any related activities will seek to encourage meaningful engagement and participation of workforce organizations, including labor unions, as well as underserved communities and underrepresented groups, including consultation with Tribal Nations.[14,15] Consistent with Executive Order 14008,[16] this FOA is designed to help meet the goal that 40% of the overall benefits of the Administration's investments in clean energy and climate solutions flow to disadvantaged communities, as defined by White House's Council on Environmental Quality pursuant to the Executive Order and to drive the creation of accessible good-paying jobs with the free and fair chance for workers to join a union.

ii. Technology Space and Strategic Goals

This FOA seeks applications that address energy efficiency upgrades, which enable scalable impacts, create innovative partnerships, and leverage funding and economies of scale. Detailed technical descriptions of the specific Topic Area is provided in the sections that follow.

a filter and only counted organizations designated as Subsection 03. Excluding nonprofits that were not clearly located in the US or a territory, there were 1,463,480 nonprofits that were designated as 501(c)(3)s. The data, including each dataset and the cover sheet, can be found here: https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf#regions

[10] https://www.bls.gov/bdm/nonprofits/tables/qcew-nonprofits-2017.xlsx

[11] EO 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" (January 20, 2021).

[12] EO 14025, "Worker Organizing and Empowerment," April 26, 2021.

[13] EO 14052, "Implementation of the Infrastructure Investment and Jobs Act," November 18, 2021.

[14] EO 13175, November 6, 2000 "Consultation and Coordination With Indian Tribal Governments", charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of federal policies that have Tribal implications.

[15] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and strengthening-nation-to-nation-relationships/, "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships" (January 26, 2021).

[16] EO 14008, "Tackling the Climate Crisis at Home and Abroad," January 27, 2021.

B. Topic Area

All work for projects selected under this FOA must be performed in the United States. See Section III.J.iii. and Appendix B.

Topic Area: High Impact Energy Efficiency Improvement Portfolios

Proposals contemplated under this FOA will be submitted by nonprofit 501(c)(3) applicants interested in serving as "Prime recipients" to assemble, post-award, a portfolio of nonprofit buildings owned and operated by 501(c)(3) organizations in need of energy efficiency upgrades. Prioritization will be given to applicants proposing to assemble portfolios that will achieve significant energy and cost savings; will reduce emissions; have an effective plan for evaluation, measurement, and verification of energy savings; demonstrate a plan for prioritizing the financial need of subrecipients; and align with the Justice40initiative goals. Applicants are encouraged to articulate a plan for recruiting building energy efficiency projects that meet or exceed the above priorities on a portfolio basis.

Energy efficient improvements include the installation of materials (product, equipment, or system) which results in a reduction in use of energy or fuel by a nonprofit organization. Examples include lighting upgrades, roof replacements with insulation, HVAC upgrades, and door or window replacements. Energy efficiency projects that include fuel switching may also be eligible if they result in energy savings.

Prime recipients are encouraged to look for projects that package two or more improvements to deepen energy and cost savings. Prime recipients should provide detailed strategies for how they will recruit nonprofit retrofit projects that meet their portfolio goals, provide technical assistance, manage a diverse portfolio of projects, and measure and communicate success.

Prime recipients should consider project approaches that enable scalable impacts, create innovative and sustaining partnerships, leverage funding and economies of scale, and focus on expanding benefits in disadvantaged communities. Project partners may include but are not limited to: governmental entities such as states and local governments; for-profit entities such as utilities and companies that provide energy services or manufacture energy systems; and non-governmental organizations such as community-based organizations, national associations, labor unions, workforce training providers, and energy-focused groups.

Performance-based criteria discussed in Section IV.A.i of this FOA will guide the applicant review process to assist with prioritizing eligible applicants. Considerations in the application review will include the strength of the project team and program plan, including measurement and verification approach; energy related impacts of portfolios including energy and cost savings, emissions reductions, and cost effectiveness; leverage and sustainability impacts; and community benefits, including financial need of subrecipients.

Example Program Partnership Scenarios:

A 501(c)(3) clean energy organization, as the Prime recipient, partners with an organization working to end hunger across the Northeast region to assemble a portfolio of 20 nonprofit buildings in need of efficiency improvements. The portfolio of projects represents food pantries serving over 90% disadvantaged communities, aligning with Justice40 goals, and has an average energy savings of 25% across projects. The clean energy organization engages donors within their existing network to secure cost share funds. The clean energy organization works with building owners and contractors to conduct energy assessments, benchmark energy use, develop scopes of work, and collect bids. By aggregating the demand for retrofits, the clean energy organization can help bring down the per-building retrofit cost. The clean energy organization troubleshoots issues with its portfolio of projects, provides measurement and verification assistance, and collects insights gained to share with DOE. The partner organization works with leadership from the portfolio organizations to support marketing and administrative efforts and qualitative program measurement. The 20 participating nonprofit building owners experience reduced energy spend which is reprogrammed to mission-critical work supporting food security their communities.

A 501(c)(3) college with a robust sustainability department engages community foundations supporting nonprofits located in high need regions of their state as well as investor-owned utilities that provide rebates for energy efficiency upgrades. The college works with the community foundations to identify a diverse portfolio of 35 501(c)(3) nonprofits in their network that own and operate their buildings, show the need for building improvements, and have the capacity to manage upgrade implementation. College faculty and graduate students conduct American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 2.0 level building audits and provide each organization with a report and prioritized list of high impact efficiency upgrades. College faculty and graduate students estimate energy reductions of the

portfolio to average 30% and greenhouse gas reductions to average 35%. They work with building owners and contractors to benchmark, develop scopes of work, and collect and review bids. The community foundations work with utilities and staff from portfolio nonprofits to apply for utility rebate programs. The cost share requirement is met through a combination of in-kind personnel costs (building assessments) and building owner contributions. The community foundations support administrative efforts and market the program outcomes to communities across the state. As a result of significant operational savings from the upgrades, the 35 nonprofit participants expand mission-critical services and staff.

i. Teaming Partner List

DOE will continue to gather information for the "Teaming Partner List," first presented in the Notice of Intent (DE-FOA-0003065), to facilitate the formation of new project teams for this FOA. The Teaming Partner List allows organizations who may wish to participate on an application to express their interest to other applicants and to explore potential partnerships.

Updates to the Teaming Partner List will be available in the Infrastructure eXCHANGE website under this funding opportunity. The Teaming Partner List will be regularly updated to reflect new teaming partners who provide their organization's information.

SUBMISSION INSTRUCTIONS: Any organization that would like to be included on the "Teaming Partner List" should fill out this Microsoft form (also located at: https://www.energy.gov/scep/renew-americas-nonprofits) or email the information to Nonprofits@hq.doe.gov with the subject line "Teaming Partner Information."

DISCLAIMER: By submitting a request to be included on the Teaming Partner List, the requesting organization consents to the publication of the above-referenced information. By facilitating the Teaming Partner List, DOE is not endorsing, sponsoring, or otherwise evaluating the qualifications of the individuals and organizations that are self-identifying themselves for placement on this Teaming Partner List. DOE will not pay for the provision of any information, nor will it compensate any applicants or requesting organizations for the development of such information.

C. Applications Specifically Not of Interest

The following types of applications will be deemed nonresponsive and will not be reviewed or considered (See Section V.D. of the FOA):

- Applications that fall outside the technical parameters specified in Section V of the FOA;
- Applications that do not include an "energy efficiency improvement" as defined in Section 40542(a)(2) of the BIL;
- Applications not led by a 501(c)(3) nonprofit organization(s);
- Applications where energy efficiency upgrades are made in buildings not owned and operated by an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code as stated under Section 40542(a)(3) of the BIL; and
- Applications for proposed technologies that are not based on sound scientific principles (e.g., violates the laws of thermodynamics).

D. Community Benefits Plan

To support the goal of building a clean and equitable energy economy, the BIL-funded projects are expected to (1) support meaningful community and labor engagement; (2) invest in America's workforce; (3) advance diversity, equity, inclusion, and accessibility; and (4) contribute to the President's goal that 40% of the overall benefits of certain federal investments flow to disadvantaged communities (the Justice40 Initiative)[17]. To ensure these goals are met, applications must include a Community Benefits Plan that describes how the proposed project would incorporate the four objectives stated above.

Applicants are encouraged to submit Community and Labor Partnership Documentation from established labor and community-based organizations that demonstrate the applicant's ability to achieve the above goals as outlined in the Community Benefits Plan. Within the Community Benefits Plan, the applicant is encouraged to provide specific detail on how to ensure the delivery of measurable community and jobs benefits, ideally through the use of negotiated

[17] The Justice40 initiative, established by E.O. 14008, sets a goal that 40% of the overall benefits of certain federal investments flow to disadvantaged communities. The Justice40 Interim Guidance provides a broad definition of disadvantaged communities (Page 2): https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf. In accordance with M-23-09, DOE will also recognize disadvantaged communities as defined and identified by the White House Council on Environmental Quality's Climate and Economic Justice Screening Tool (CEJST), which can be located at https://screeningtool.geoplatform.gov/.

agreements between the applicant and the community, and/or the applicant and labor unions referred to collectively here as "Workforce and Community Agreements". See Section III.D.vii for the Community Benefits Plan content requirements.

E. Authorizing Statutes

The programmatic authorizing statute is Section 40542 of Public Law 117-58. Awards made under this announcement will fall under the purview of 2 CFR Part 200 as amended by 2 CFR Part 910.

F. Notice of Bipartisan Infrastructure Law-Specific Requirements

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

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

Recipients of funding appropriated by the BIL must comply with requirements of all applicable federal, state, and local laws, regulations, DOE policy and guidance, and instructions in this FOA. Recipients must flow down the requirements to subrecipients to ensure the recipient's compliance with the requirements.

II. Award Information

A. Award Overview

i. Estimated Funding

SCEP expects to make a total of approximately $45,000,000 of federal funding available for new awards under this FOA, subject to the availability of appropriated funds. SCEP anticipates making approximately 5-15 awards under this FOA. SCEP may issue one, multiple, or no awards. Individual awards may vary between $3,000,000 and $9,000,000.

Topic Area Title	Anticipated Number of Awards	Anticipated Minimum Award Size for Any One Individual Award (Fed Share)	Anticipated Maximum Award Size for Any One Individual Award (Fed Share)	Approximate Total Federal Funding Available for All Awards	Anticipated Period of Performance (months)
High Impact Energy Efficiency Improvement Portfolios	5 - 15	$3,000,000	$9,000,000	$45,000,000	36 - 48

SCEP may establish more than one budget period for each award and fund only the initial budget period(s). Funding for all budget periods, including the initial budget period, is not guaranteed.

ii. Period of Performance

SCEP anticipates making awards that will run from 36 months up to 48 months in length, comprised of multiple budget periods. Project continuation will be contingent upon several elements, including satisfactory performance and DOE's Go/No-Go decision. For a complete list and more information on the Go/No-Go review, see Section VI.B.xiv.

iii. New Applications Only

SCEP will accept only new applications under this FOA. SCEP will not consider applications for renewals of existing SCEP-funded awards through this FOA.

B. SCEP Funding Agreements

Through cooperative agreements and other similar agreements, SCEP provides financial and other support to projects that have the potential to realize the FOA objectives. SCEP does not use such agreements to acquire property or services for the direct benefit or use of the United States government.

i. Cooperative Agreements

SCEP generally uses cooperative agreements to provide financial and other support to Prime recipients.

Through cooperative agreements, SCEP provides financial or other support to accomplish a public purpose of support or stimulation authorized by federal statute. Under cooperative agreements, the government and Prime recipients share responsibility for the direction of projects.

SCEP has substantial involvement in all projects funded via cooperative agreement. See Section VI.B.x. of the FOA for more information on what substantial involvement may involve.

ii. Funding Agreements with Federally Funded Research and Development Center (FFRDCs)[18]

In most cases, FFRDCs are funded independently of the remainder of the project team. The FFRDC then executes an agreement with any non-FFRDC project team members to arrange work structure, project execution, and any other matters. Regardless of these arrangements, the entity that applied as the Prime recipient for the project will remain the Prime recipient for the project. See Section III.A.xi.

III. Application and Submission Information

A. Application Process

The application process includes a Letters of Intent and a Full Application. Letters of Intent are encouraged, but not required.

[18] Federally Funded Research and Development Centers (FFRDC) - FFRDCs are public-private partnerships which conduct research for the United States government. A listing of FFRDCs can be found at http://www.nsf.gov/statistics/ffrdclist/.

- Each must be submitted in Adobe PDF format unless stated otherwise;
- Each must be written in English;
- All pages must be formatted to fit on 8.5" x 11" paper with margins not less than one inch on every side. Use Calibri typeface, a black font color, and a font size of 12-point or larger (except in figures or tables, which may be 10-point font). A symbol font may be used to insert Greek letters or special characters, but the font size requirement still applies. References must be included as footnotes or endnotes in a font size of 10 or larger. Footnotes and endnotes are counted toward the maximum page requirement;
- A **control number** will be issued when an applicant begins the Infrastructure eXCHANGE application process. The control number must be included with all application documents. Specifically, the control number must be prominently displayed on the upper right corner of the header of every page and included in the file name (i.e., *Control Number_Applicant Name_Full Application*);
- Page numbers must be included in the footer of every page; and
- Each submission must not exceed the specified maximum page limit, including cover page, charts, graphs, maps, and photographs when printed using the formatting requirements set forth above and single spaced. If applicants exceed the maximum page lengths indicated below, SCEP will review only the authorized number of pages and disregard any additional pages.

i. Additional Information on Infrastructure eXCHANGE

Infrastructure eXCHANGE is designed to enforce the deadlines specified in this FOA. The "Apply" and "Submit" buttons will automatically disable at the defined submission deadlines. Should applicants experience problems with Infrastructure eXCHANGE, the following information may be helpful.

Applicants that experience issues with submission PRIOR to the FOA deadline: In the event that an applicant experiences technical difficulties with a submission, the applicant should contact the Infrastructure eXCHANGE helpdesk for assistance (InfrastructureExchangeSupport@hq.doe.gov). The Infrastructure eXCHANGE helpdesk and/or the Infrastructure eXCHANGE system administrators will assist applicants in resolving issues.

B. Application Forms and Templates

The application forms and instructions are available on Infrastructure eXCHANGE. To access these materials, go to https://infrastructure-exchange.energy.gov and select DE-FOA-0003066.

Note: The maximum file size that can be uploaded to the Infrastructure eXCHANGE website is 50MB. Files in excess of 50MB cannot be uploaded, and hence cannot be submitted for review. If a file exceeds 50MB but is still within the maximum page limit specified in the FOA, it must be broken into parts and denoted to that effect. For example:
Project NarrativeTemplate_Part_1, Project Narrative Template _Part_2

SCEP will not accept late submissions that resulted from technical difficulties due to uploading files that exceed 50MB.

C. Content and Form of the Letter of Intent

Applicants are encouraged to submit a Letter of Intent by the specified due date and time. Letters of Intent are limited to two pages. Letters of Intent will be used by SCEP to plan for the merit review process. The letters should not contain any proprietary or sensitive business information. The letters will not be used for down-selection purposes and do not commit an applicant to submit an application.

Each applicant should provide the following information as part of the Letter of Intent:

- Project team including Prime Applicant and proposed partner organizations;
- Approach to recruiting sub-recipients building efficiency projects, including any organizational and building evaluation processes;
- Plan for providing technical and administrative assistance to sub-recipients;
- Project management approach, including measurement and verification approach for the portfolio building efficiency projects; and
- Plan to leverage funds, achieve economies of scale, and lay groundwork for enduring impact beyond the period of performance.

D. Content and Form of the Full Application

Applicants must complete the following application forms found on the Infrastructure eXCHANGE website at https://infrastructure-exchange.energy.gov/

The submission deadline for the Full Application remains the date and time stated on the FOA cover page. **Applicants are encouraged to use the "Project Narrative Template" that is available as an attachment under this funding opportunity**. If applicants do not use the template, the content in the "Project Narrative Template" is required and must conform to the form and content requirements, including maximum page lengths. All Full Application documents must be marked with the control number issued to the applicant.

Full Application Content Requirements

Each Full Application must be limited to a single concept. Full Applications must conform to the following requirements and must not exceed the stated page limits.

Component	Required/ Optional	File Format	Page Limit	File Name
Project Narrative	Required	PDF	15 pages	ControlNumber_LeadOrganization_ProjectNarrative
Resumes	Required	PDF	3 pages each	ControlNumber_LeadOrganization_Resumes
Letters of Commitment	Required	PDF	1 page each	ControlNumber_LeadOrganization_LOCs
990 Form	Required	PDF	n/a	ControlNumber_LeadOrganization_990
SF-424: Application for Federal Assistance	Required	PDF	n/a	ControlNumber_LeadOrganization_App424
Budget Justification Workbook (SF-424A)	Required	MS Excel	n/a	ControlNumber_LeadOrganization_Budget_Justification
Summary Slide	Required	MS PowerPoint	1	ControlNumber_LeadOrganization_Slide
Community Benefits Plan	Required	PDF	5	ControlNumber_LeadOrganization_CBenefits
Community Partnership Documentation	Optional	PDF	10 pages	ControlNumber_LeadOrganization_PartnerDocs
Budget for DOE/NNSA FFRDC (if applicable)	Required (if applicable)	PDF	n/a	ControlNumber_LeadOrganization_WP
Authorization from cognizant Contracting Officer for FFRDC	Required (if applicable)	PDF	n/a	ControlNumber_LeadOrganization_FFRDCAuth
SF-LLL	Required	PDF	n/a	ControlNumber_LeadOrganization_SF-LLL
Foreign Entity Waiver Requests	Optional	PDF	n/a	ControlNumber_LeadOrganization_Waiver
Transparency of Foreign Connections	Required	PDF	n/a	BusinessSensitive_ControlNumber_LeadOrganization_TFC
Potentially Duplicative Funding Notice	Required	PDF	n/a	ControlNumber_LeadOrganization_PDFN

Note: The maximum file size that can be uploaded to the Infrastructure eXCHANGE website is 50MB. See Section III.B.

DOE provides detailed guidance on the content and form of each component below.

i. Project Narrative

The Project Narrative should clearly describe and expand upon the information provided in the Letter of Intent. The content must address the technical review criteria as discussed in Section IV.A.i. and should consider the weighting of each criterion. FOA Applicants are encouraged to complete this requirement using the "Project Narrative Template" provided on Infrastructure Exchange, https://infrastructure-exchange.energy.gov, under this FOA posting. However, if applicants choose not to use the template, the content requirements as specified in the "Project Narrative Template" are still required.

Applicants must provide sufficient citations and references to the primary research literature to justify the claims and approaches made in the Project Narrative. However, DOE and reviewers are under no obligation to review cited sources.

The Project Narrative to the Full Application may not be more than [fifteen] 15 pages, including the cover page and all citations, charts, graphs, maps, photos, or other graphics. Applicants should save the Project Narrative in a single PDF file using the following naming convention for the title. "ControlNumber_LeadOrganization_ProjectNarrative".

i. Resumes

A resume provides information that can be used by reviewers to evaluate the individual's relevant skills and experience of the key project personnel. Applicants must submit a resume (limited to three pages) for each project manager and key personnel that includes the following:

1. Contact information;
2. Education: Include all academic institutions attended, major/area, degree;
3. Training: (e.g.,) certification or credential from a Registered Apprenticeship or Labor Management Partnership;

4. Professional experience: Beginning with the current position, list professional/academic positions in chronological order with a brief description; and
5. List all current academic, professional, or institutional appointments, foreign or domestic, at the applicant institution or elsewhere, whether or not remuneration is received, and, whether full-time, part-time, or voluntary.

   Save the resumes in a single PDF file using the following convention for the title "ControlNumber_LeadOrganization_Resumes".

ii. Letters of Commitment

Submit letters of commitment from all subrecipient and third-party cost share providers. If applicable, the letter must state that the third party is committed to providing a specific minimum dollar amount or value of in-kind contributions allocated to cost sharing. The following information for each third party contributing to cost sharing should be identified: (1) the name of the organization; (2) the proposed dollar amount to be provided; and (3) the proposed cost sharing type (e.g., cash or in-kind contributions). Each letter must not exceed 1 page. Save the letters of commitment in a single PDF file using the following convention for the title "ControlNumber_LeadOrganization_LOCs".

Letters of commitment or endorsement for the project from entities that do not have a substantive role in the project are not accepted.

iii. 990 Form

Applicants must submit a current 990 Form – providing financial information about their nonprofit organization.

iv. SF-424: Application for Federal Assistance

Applicants must complete the SF-424 Application for Federal Assistance which is available on Infrastructure Exchange, https://infrastructure-exchange.energy.gov, under this FOA posting at: EERE Funding Application and Management Forms. Complete all required fields in accordance with the instructions on the form. The list of certifications and assurances in Field 21 can be found at http://energy.gov/management/office-management/operational-management/financial-assistance/financial-assistance-forms, under Certifications and Assurances. Note: The dates and

dollar amounts on the SF-424 are for the complete project period and not just the first project year, first phase or other subset of the project period.

Save the SF-424 in a single PDF file using the following convention for the title "ControlNumber_LeadOrganization_424".

v. Budget Justification Workbook

Applicants must complete the Budget Justification Workbook, which is available on Infrastructure Exchange, https://infrastructure-exchange.energy.gov, under this FOA posting at: EERE Funding Application and Management Forms. Applicants must complete each tab of the Budget Justification Workbook for the project as a whole, including all work to be performed by the Prime recipient and its subrecipients and contractors. Applicants should include costs associated with implementing the various BIL-specific requirements (e.g., Buy America requirements for infrastructure projects, Davis Bacon, Community Benefits Plan, reporting, oversight) and with required annual audits and incurred cost proposals in their proposed budget documents. Such costs may be reimbursed as a direct or indirect cost. The "Instructions and Summary" included with the Budget Justification Workbook will auto-populate as the applicant enters information into the Workbook. Applicants must carefully read the "Instructions and Summary" tab provided within the Budget Justification Workbook.

Save the Budget Justification Workbook in a single Microsoft Excel file using the following convention for the title "ControlNumber_LeadOrganization_Budget_Justification".

vi. Summary Slide

Applicants must submit a short one paragraph summary of their project that is suitable for dissemination to the public should they be selected for negotiation. An example has been provided which is available on

Infrastructure Exchange, https://infrastructure-exchange.energy.gov, under this FOA. Information that may be contained in this slide could include:

- The name of the applicant;
- The objectives/description of the project;
- The potential impact of the project (e.g., benefits, outcomes); and
- The project's commitments and goals described in the Community Benefits Plan.

The summary should fit on a standard power point slide with font not smaller than 12 point.

Save the Summary for Public Release in a single PDF file using the following naming convention "ControlNumber_LeadOrganization_Summary".

vii. Community Benefits Plan

The Community Benefits Plan: (Plan) must set forth the applicant's approach to ensuring that Federal investments advance the following four goals: 1) community and labor engagement; 2) investing in job quality and workforce continuity; 3) advancing diversity, equity, inclusion, and accessibility (DEIA); and 4) contributing to the Justice40 Initiative. The below sections set forth the Plan requirements for each of the foregoing goals. At this stage of the application process, the Community Benefits Plan should indicate the applicant's intention to engage meaningfully with community stakeholders on these goals, including the potential of entering into a formal Workforce and Community Agreement. Given project complexity and sensitivities, applicants should consider pursuing multiple agreements.

The applicant's Community Benefits Plan must include at least one Specific, Measurable, Achievable, Relevant and Timely (SMART) milestone per budget period in order to measure progress on the proposed actions. The Community Benefits Plan will be evaluated as part of the technical review process. If DOE selects a project, DOE will incorporate the Community Benefits Plan into the award and the recipient must implement its Community Benefits Plan as part of carrying out its project. Public transparency around the plan and SMART commitments is necessary for ensuring accountability. In addition, during the life of the DOE award, DOE will evaluate the recipient's progress, including as part of the Go/No-Go review process.

The Community Benefits Plan must not exceed [five] 5 pages. Applicants must address the categories below. Applicants may use (but are not required to use) the Community Benefits Plan template located on Infrastructure eXCHANGE website at https://infrastructure-exchange.energy.gov/.

Save the Community Benefits Plan in a single PDF file using the following convention. It must be submitted in PDF format using the following convention name for the title:
"ControlNumber_LeadOrganization_CBenefits."

This Plan must address the technical review criterion titled, "Community Benefits Plan". See Section IV. of the FOA. For additional information, see Community Benefits Plan Frequently Asked Questions (FAQs).

1. Community and Labor Engagement: The Community Benefits Plan must describe the applicant's actions to date and future plans to engage with labor unions and community stakeholders – such as local governments, Tribal governments, and community-based organizations that support or work with underserved communities, including Disadvantaged Communities as defined for purposes of the Justice40 Initiative. By facilitating community input, social buy-in, and accountability, such engagement can substantially reduce or eliminate stalls or slowdowns, litigation, and other risks associated with project implementation.

Community and labor engagement should ideally lay the groundwork for the eventual negotiation of a Workforce and Community Agreement, which could take the form of one or more kinds of negotiated agreements with communities, labor unions, or ideally both. Registered apprenticeship programs, labor-management training partnerships, quality pre-apprenticeship programs, card check neutrality, and local and targeted hiring goals are all examples of provisions that Workforce and Community Agreements could cover that would increase the success of a DOE-funded project.

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

2. Investing in Job Quality and Workforce Continuity: A well-qualified, skilled, and trained workforce is necessary to ensure project stability, continuity, and success, and to meet program goals. High quality jobs are critical to attracting and retaining the qualified workforce required.

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

Specific components of the Plan must include:

A) A summary of the applicant's plan to attract, train, and retain a skilled and well-qualified workforce for both construction *and* ongoing operations/production activities. A collective bargaining agreement, labor-management partnership, or other similar agreement would provide evidence of such a plan. Alternatively, applicants may describe:
   i. Wages, benefits, and other worker supports to be provided benchmarking against prevailing wages for construction and local median wages for other occupations;
   ii. Commitments to invest in workforce education and training, including measures to reduce attrition, increase productivity from a committed and engaged workforce, and support the development of a resilient, skilled, and stable workforce for the project; and
   iii. Efforts to engage employees in the design and execution of workplace safety and health plans.

B) A description of employees' ability to organize, bargain collectively, and participate, through labor organizations of their choosing, in decisions that affect them, contributes to the effective conduct of business, and facilitates amicable settlements of any potential disputes between employees and employers, providing assurances of project efficiency, continuity, and multiple public benefits. In the description, explain whether workers can form and join unions of their choosing, and how they will have the opportunity to organize with the purposes of exercising collective voice in the workplace.

3. DEIA: The Community Benefits Plan must include a section describing how diversity, equity, inclusion, and accessibility (DEIA) objectives will be incorporated into the project. The section should detail how the applicant will partner with underrepresented businesses, educational institutions, and training organizations that serve workers who face barriers to accessing quality jobs, and/or other project partners to help address DEIA.

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

A) Commitment to partner with Minority Business Enterprises, Minority Owned Businesses, Woman Owned Businesses, and Veteran Owned Businesses for contractor support needs;
B) Commitment to fill open positions for the DOE-funded project, partner with workforce training organizations serving under-represented communities and those facing systemic barriers to quality employment such as those with disabilities, returning citizens, opportunity youth, and veterans; and
C) In addition, applicants should consider providing comprehensive support services to increase representation and access in project's construction and operations jobs.

4. Justice40 Initiative: Applicants must provide an overview of benefits to disadvantaged communities that the project can deliver, supported by measurable milestones. Specifically, the Justice40 Initiative section must include:

A) Identification of applicable disadvantaged communities to which the anticipated project benefits will flow; and
B) Identification of applicable benefits that are quantifiable, measurable, and trackable, including, at a minimum, a discussion of the relevance of each of the eight DOE Justice40 Initiative benefits outlined below.

Benefits include (but are not limited to) measurable direct or indirect investments or positive project outcomes that achieve or contribute to the following in disadvantaged communities: (1) a decrease in energy burden; (2) a decrease in environmental exposure and burdens; (3) an increase in access to low-cost capital; (4) an increase in high-quality job creation, the clean energy job pipeline, and job training for individuals; (5) increases

in clean energy enterprise creation and contracting (e.g., minority-owned or disadvantaged business enterprises); (6) increases in energy democracy, including community ownership; (7) increased parity in clean energy technology access and adoption; and (8) an increase in energy resilience. In addition, applicants should also discuss how the project will maximize all of the benefits listed in #4 (above).

C) A description of how and when anticipated benefits are expected to flow to disadvantaged communities. For example, will the benefits be provided directly within disadvantaged communities identified in the Justice40 Initiative section, or are the benefits expected to flow in another way? Further, will the benefits flow during project development or after project completion, and how will applicant track benefits delivered?

A discussion of anticipated negative and cumulative environmental impacts on disadvantaged communities. Are there anticipated negative or positive environmental impacts associated with the project, and how will the applicant mitigate any negative impacts? Within the context of cumulative impacts created by the project, applicants should use the White House Council for Environmental Quality's Environmental Quality's Climate and Economic Justice Screening Tool: Explore the map - Climate & Economic Justice Screening Tool (geoplatform.gov)
For projects funded under this FOA, DOE will provide specific reporting guidance for the benefits described above.

viii. Community Partnership Documentation

In support of the Community Benefits Plan, applicants may submit documentation to demonstrate existing or planned partnerships with community entities, such as, organizations that work with local stakeholders most vulnerable to or affected by the project, such as organizations that carry out workforce development programs, labor unions, tribal organizations, and community-based organizations that work with disadvantaged communities. The Partnership Documentation could be in the form of a letter on the partner's letterhead outlining the planned partnership signed by an officer of the entity, a Memorandum of Understanding, or other similar agreement. Such letters must state the specific nature of the partnership and must not be general letters of support. If the applicant intends to enter into a Workforce and Community Agreement as part of the

Community Benefits Plan, please include letters from proposed partners as appropriate. Each letter must not exceed [one] 1 page. In total, the partnership documentation must not exceed [ten] 10 pages. Save the partnership documentation in a single PDF file using the following convention for the title "ControlNumber_LeadOrganization_PartnerDoc".

ix. Budget for DOE/NNSA FFRDC (if applicable)

If a DOE/NNSA FFRDC is to perform a portion of the work, the applicant must provide a DOE WP in accordance with the requirements in DOE Order 412.1A, Work Authorization System, Attachment 2, available at: https://www.directives.doe.gov/directives-documents/400-series/0412.1-BOrder-a-chg1-AdmChg.

Save the WP in a single PDF file using the following convention for the title "ControlNumber_LeadOrganization_WP".

x. Authorization for non-DOE/NNSA or DOE/NNSA FFRDCs (if applicable)

The federal agency sponsoring the FFRDC must authorize in writing the use of the FFRDC on the proposed project and this authorization must be submitted with the application. The use of a FFRDC must be consistent with the contractor's authority under its award.

Save the Authorization in a single PDF file using the following convention for the title "ControlNumber_LeadOrganization_FFRDCAuth".

xi. SF-LLL: Disclosure of Lobbying Activities (required)

Recipients and subrecipients may not use any federal funds to influence or attempt to influence, directly or indirectly, congressional action on any legislative or appropriation matters.

Recipients and subrecipients are required to complete and submit SF-LLL, "Disclosure of Lobbying Activities" (https://www.grants.gov/web/grants/forms/sf-424-individual-family.html) to ensure that non-federal funds have not been paid and will not be paid to any person for influencing or attempting to influence any of the following in connection with the application:

- An officer or employee of any federal agency;
- A member of Congress;

- An officer or employee of Congress; or
- An employee of a member of Congress.

Save the SF-LLL in a single PDF file using the following convention for the title "ControlNumber_LeadOrganization_SF-LLL".

xii. Foreign Entity Waiver Requests (if applicable)

Foreign Entity Participation
As set forth in Section V.A.i, all recipients must qualify as domestic entities. To request a waiver of this requirement, the applicant must submit an explicit waiver request in the Full Application. Appendix B lists the information that must be included in a waiver request.

Save the Waivers in a single PDF file using the following convention for the title "ControlNumber_LeadOrganization_Waiver".

xiii. Potentially Duplicative Funding Notice

If the applicant or project team member has other active awards of federal funds, the applicant must determine whether the activities of those awards potentially overlap with the activities set forth in its application to this FOA. If there is a potential overlap, the applicant must notify DOE in writing of the potential overlap and state how it will ensure any project funds (i.e., recipient cost share and federal funds) will not be used for identical cost items under multiple awards. Likewise, for projects that receive funding under this FOA, if a recipient or project team member receives any other award of federal funds for activities that potentially overlap with the activities funded under the DOE award, the recipient must promptly notify DOE in writing of the potential overlap and state whether project funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under the DOE award. If there are identical cost items, the recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

Save the Potentially Duplicative Funding Notice in a single PDF file using the following convention for the title:
"ControlNumber_LeadOrganization_PDFN."

E. Content and Form of Replies to Reviewers Comments

SCEP will provide applicants with reviewer comments following the evaluation of all eligible Full Applications. Applicants have a brief opportunity to prepare a short Reply to Reviewer Comments (Reply). The Reply must not exceed [three] 3 pages. If a Reply is more than [three] 3 pages in length, SCEP will review only the first three (3) pages and disregard any additional pages. Applicants may use the Reply to respond to one or more comments or to supplement their Full Application. The Reply may include text, graphs, charts, or data.

SCEP will post the reviewer comments in Infrastructure eXCHANGE. The expected submission deadline is on the cover page of the FOA; however, it is the applicant's responsibility to monitor Infrastructure eXCHANGE in the event that the expected date changes. The deadline will not be extended for applicants who are unable to submit their Reply due to failure to check Infrastructure eXCHANGE or relying on the expected date alone. Applicants should anticipate having approximately [three] 3 business days to submit a Reply.

Applicants are not required to submit a Reply. SCEP will review and consider each eligible Full Application, even if no Reply is submitted or if the Reply is found to be ineligible.

F. Post Selection Information Requests

If selected for award negotiations, DOE reserves the right to require that selected applicants provide additional or clarifying information regarding the application submissions, the project, the project team, the award requirements, and any other matters related to anticipated award. The following is a non-exhaustive list of examples of information that may be required:

- Personnel proposed to work on the project and collaborating organizations (See Section VI.B.xviii. Participants and Collaborating Organizations);
- Indirect cost information;
- Other budget information;
- Letters of Commitment from third parties contributing to cost share, if applicable;
- Name and phone number of the Designated Responsible Employee for complying with national policies prohibiting discrimination (See 10 CFR 1040.5);
- Information for the DOE Office of Civil Rights to process assurance reviews under 10 CFR 1040;

- Representation of Limited Rights Data and Restricted Software, if applicable;
- Information related to Davis-Bacon Act Requirements;
- Information related to any proposed Workforce and Community Agreement, as defined above in "Community Benefits Plan," that applicants may have made with the relevant community; and
- Environmental Questionnaire.

G. Unique Entity Identifier (UEI) and System for Award Management (SAM)

Each applicant (unless the applicant is an individual or federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the federal awarding agency under 2 CFR 25.110(d)) is required to: (1) Be registered in the SAM at https://www.sam.gov before submitting its application; (2) provide a valid UEI number in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. DOE may not make a federal award to an applicant until the applicant has complied with all applicable UEI and SAM requirements and, if an applicant has not fully complied with the requirements by the time DOE is ready to make a federal award, the DOE will determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

NOTE: Due to the high demand of UEI requests and SAM registrations, entity legal business name and address validations are taking longer than expected to process. Entities should start the UEI and SAM registration process as soon as possible. If entities have technical difficulties with the UEI validation or SAM registration process they should utilize the **HELP** feature on **SAM.gov**. SAM.gov will work entity service tickets in the order in which they are received and asks that entities not create multiple service tickets for the same request or technical issue. Additional entity validation resources can be found here: **GSAFSD Tier 0 Knowledge Base - Validating your Entity**.

H. Submission Dates and Times

All required submissions must be submitted in Infrastructure eXCHANGE no later than 5 p.m. ET on the dates provided on the cover page of this FOA.

I. Intergovernmental Review

This FOA is not subject to Executive Order 12372 – Intergovernmental Review of Federal Programs.

J. Funding Restrictions

i. Allowable Costs

All expenditures must be allowable, allocable, and reasonable in accordance with the applicable federal cost principles. Pursuant to 2 CFR 910.352, the cost principles in the Federal Acquisition Regulations (48 CFR 31.2) apply to for-profit entities. The cost principles contained in 2 CFR Part 200, Subpart E apply to all entities other than for-profits.

ii. Pre-Award Costs

Applicants selected for award negotiations (selectee) must request prior written approval to charge pre-award costs. Pre-award costs are those incurred prior to the effective date of the federal award directly pursuant to the negotiation and in anticipation of the federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the federal award and **only** with the written approval of the federal awarding agency, through the DOE Contracting Officer.

Pre-award costs cannot be incurred prior to the Selection Official signing the Selection Statement and Analysis.

Pre-award expenditures are made at the selectee's risk. SCEP is not obligated to reimburse costs: (1) in the absence of appropriations; (2) if an award is not made; or (3) if an award is made for a lesser amount than the selectee anticipated.

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

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

SCEP does not guarantee or assume any obligation to reimburse pre-award costs incurred prior to receiving written authorization from the Contracting Officer. If the applicant elects to undertake activities that DOE determines

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

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

1. **Requirement**
   All work performed under awards issued under this FOA must be performed in the United States. The Prime recipient must flow down this requirement to its subrecipients.

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

3. **Waiver**
   To seek a foreign work waiver, the applicant must submit a written waiver request to SCEP. Appendix B lists the information that must be included in a request for a foreign work waiver.

   Save the waiver request(s) in a single PDF file. The applicant does not have the right to appeal DOE's decision concerning a waiver request.

iv. Construction

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

v. Foreign Travel

Foreign travel costs are not allowable under this FOA.

vi. Equipment and Supplies

Property disposition may be required at the end of a project if the current fair market value of property exceeds $5,000. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310 – 200.316.

vii. Buy America Requirements for Infrastructure Projects

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

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

Whether a given project must apply this requirement is project-specific and dependent on several factors, such as the recipient's entity type, whether the work involves "infrastructure," as that term is defined in Section 70914 of the Bipartisan Infrastructure Law, and whether the infrastructure in question is publicly owned or serves a public function.

Applicants are strongly encouraged to consult Appendix C of this FOA to determine whether their project may have to apply this requirement, both to make an early determination as to the need of a waiver, as well as to determine what impact, if any, this requirement may have on the proposed project's budget.

Please note that, based on implementation guidance from the Office of Management and Budget (OMB) issued on April 18, 2022, the Buy America requirements of the BIL do not apply to DOE projects in which the Prime recipient is a for-profit entity; the requirements only apply to projects whose

Prime recipient is a "non-Federal entity," e.g., a State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization. Subawards should conform to the terms of the Prime award from which they flow; in other words, for-profit Prime recipients are not required to flow down these Buy America requirements to subrecipients, even if those subrecipients are non-Federal entities as defined above. Conversely, Prime recipients which are non-Federal entities must flow the Buy America requirements down to all subrecipients, even if those subrecipients are for-profit entities. Finally, for all applicants—both non-Federal entities and for-profit entities—DOE is including a Program Policy Factor that the Selection Official may consider in determining which Full Applications to select for award negotiations that considers whether the applicant has made a commitment to procure U.S. iron, steel, manufactured products, and construction materials in its project.

The DOE financial assistance agreement will require each recipient: (1) to fulfill the commitments made in its application regarding the procurement of U.S.-produced products and (2) to fulfill the commitments made in its application regarding the procurement of other key component metals and manufactured products domestically that are deemed available in sufficient and reasonably available quantities or of a satisfactory quality at the time of award negotiation. Applicants may seek waivers of these requirements in very limited circumstances and for good cause shown. Further details on requesting a waiver can be found in Appendix C and the terms and conditions of the applicant's award.

Applicants are strongly encouraged to consult Appendix C for more information.

viii. Davis-Bacon Act Requirements

Projects awarded under this FOA will be funded under Division D of the Bipartisan Infrastructure Law. Accordingly, per Section 41101 of that law, all laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work funded in whole or in part under this FOA shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Applicants shall provide written assurance acknowledging the DBA requirements above, and confirming that the laborers and mechanics performing construction, alteration, or repair work on projects funded in whole or in part by awards made as a result of this FOA are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

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

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

(2) ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from contracts and subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.

(3) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.

(4) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.

(5) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the United States Department of Labor (DOL) upon request, as required by 29 CFR 5.6(a)(2).

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

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

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

(9) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR Parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; DOL investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(10) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (https://doeibenefits2.energy.gov), its successor system, or other manner of compliance as directed by the Contracting Officer.

Recipients of funding under this FOA will also be required to undergo Davis-Bacon Act compliance training and to maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The DOL offers free Prevailing Wage Seminars several times a year that meet this requirement, at https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events.

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

DOE anticipates contracting with a third party for a Davis-Bacon Act electronic payroll compliance software application. Recipients of funding under this FOA must ensure the timely electronic submission of weekly certified payrolls through this software as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or

subcontractor because they are unable or limited in their ability to use or access. Applicants should indicate if a waiver will be sought.

ix. Lobbying

Recipients and subrecipients may not use any federal funds to influence or attempt to influence, directly or indirectly, congressional action on any legislative or appropriation matters.

Recipients and subrecipients are required to complete and submit SF-LLL, "Disclosure of Lobbying Activities" (https://www.grants.gov/web/grants/forms/sf-424-individual-family.html) to ensure that non-federal funds have not been paid and will not be paid to any person for influencing or attempting to influence any of the following in connection with the application:

- An officer or employee of any federal agency;
- A Member of Congress;
- An officer or employee of Congress; or
- An employee of a Member of Congress.

x. Risk Assessment

Pursuant to 2 CFR 200.206, DOE will conduct an additional review of the risk posed by applications submitted under this FOA. Such risk assessment will consider:

1. Financial stability;
2. Quality of management systems and ability to meet the management standards prescribed in 2 CFR 200 as amended and adopted by 2 CFR 910;
3. History of performance;
4. Audit reports and findings; and
5. The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-federal entities.

DOE may make use of other publicly available information and the history of an applicant's performance under DOE or other federal agency awards.

Depending on the severity of the findings and whether the findings were resolved, DOE may elect not to fund the applicant.

In addition to this review, DOE must comply with the guidelines on government-wide suspension and debarment in 2 CFR Part 180, and must require non-federal entities to comply with these provisions. These provisions restrict federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal programs or activities.

Further, as DOE invests in critical infrastructure and funds critical and emerging technology areas, DOE also considers possible vectors of undue foreign influence in evaluating risk. If high risks are identified and cannot be sufficiently mitigated, DOE may elect to not fund the applicant.

xi. Invoice Review and Approval

DOE employs a risk-based approach to determine the level of supporting documentation required for approving invoice payments. Recipients may be required to provide some or all of the following items with their requests for reimbursement:

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

xii. Prohibition related to Foreign Government-Sponsored Talent Recruitment Programs

a. Prohibition

Persons participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk* are prohibited from participating in projects selected for federal funding under this FOA. Should an award result from this FOA, the recipient must exercise ongoing due diligence to reasonably ensure that no individuals participating on the DOE-funded project are participating in a *Foreign*

Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the recipient must notify DOE within five (5) business days upon learning that an individual on the project team is or is believed to be participating in a foreign government talent recruitment program of a foreign country of risk. DOE may modify and add requirements related to this prohibition to the extent required by law.

b. Definitions

1. **Foreign Government-Sponsored Talent Recruitment Program.** An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

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

xiii. 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 Equal Employment Opportunity:

(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 must 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 and contractors.

(3) Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide[19] should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

xiv. Foreign Collaboration Considerations

a. Consideration of new collaborations with foreign organizations and governments. The recipient will be required to provide DOE with advanced written notification of any potential collaboration with foreign organizations or governments in connection with its DOE-funded award scope. The recipient will then be required to await further guidance from DOE prior to contacting the proposed foreign organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.

b. Existing collaborations with foreign organizations and governments. The recipient will be required to provide DOE with a written list of all existing

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

foreign collaborations in which has entered in connection with its DOE-funded award scope.

c. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the DOE award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the DOE award but resulting in provision of a thing of value from or to the DOE award must also be reported. Collaborations do not include routine workshops, conferences, use of the recipient's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the recipient's standard polies and procedures.

IV. Application Review Information

A. Technical Review Criteria

i. Full Applications

Applications will be evaluated against the technical review criteria shown below. All sub-criteria are of equal weight.

Criterion 1: Project Team and Program Plan (40%)

- **Project team composition:** Degree to which the team represents the experience and qualifications necessary to successfully achieve program goals.
- **Organizational Health:** Degree to which the Prime recipient demonstrates sound fiscal standing and leadership strength.
- **Effective Recruitment Plan:** Degree to which the plan will likely result in successful recruitment and retention of eligible sub recipients that demonstrate financial need aligned with Justice40 goals.
- **Effective Technical Assistance Approach:** Soundness of a plan to provide assistance to portfolio participants both in terms of technical program components (e.g., benchmarking, energy assessments, etc.) and

administrative assistance (e.g., reporting, applying for utility rebates, etc.).

- **Effective Measurement & Verification Approach:** Clarity, robustness, and feasibility of narrative discussing plans to measure and verify the impacts of project portfolio projects.

Criterion 2: Energy Related Impacts of Portfolios (30%)

- **Energy Savings:** Degree to which proposed portfolio to be assembled will likely result in significant energy or fuel savings.
- **Energy Cost Savings:** Degree to which proposed portfolio to be assembled will likely result in significant energy cost savings.
- **Emission Reductions:** Degree to which proposed portfolio to be assembled will likely result in significant emission reductions.
- **Cost Effectiveness:** Degree to which proposed portfolio to be assembled will likely result in benefits, both financial and other non-monetary benefits, that outweigh the cost in terms of funds invested.

Criterion 3: Leverage and Sustainability (15%)

- **Leverage:** Degree to which proposed project demonstrates leverage of Federal investment. Examples include cost share, economies of scale to drive down per unit cost, attracting private investment, and braiding funds across other programs.
- **Enduring Impact:** Degree to which the proposed project establishes pathways for enduring impact that continues beyond the life of the grant. Examples include the standing up of sustainable organizational programs that continue to assist in facility retrofits.

Criterion 4: Community Benefits Plan (15%)

This criterion involves consideration of the following factors:

<u>Community and Labor Engagement</u>

- Extent to which the applicant demonstrates community and labor engagement to date that results in support for the proposed project;
- Extent to which the applicant has a clear and appropriately robust plan to engage—ideally through a clear commitment to negotiate an enforceable Workforce & Community Agreements--with labor unions, Tribal entities, and community-based organizations that support or work with disadvantaged communities and other affected stakeholders;
- Extent to which the applicant has considered accountability to affected workers and community stakeholders, including those most vulnerable to

project activities with a plan to publicly share SMART community benefits plan commitments; and
- Extent to which the applicant demonstrates that community and labor engagement will lead to the delivery of high-quality jobs, minimal environmental impact, and allocation of project benefits to disadvantaged communities.

Job Quality and Workforce Continuity
- Quality and manner in which the proposed project will create and/or retain high quality, good-paying jobs with employer-sponsored benefits for all classifications and phases of work;
- Extent to which the project provides employees with the ability to organize, bargain collectively, and participate, through labor organizations of their choosing, in decisions that affect them and that contribute to the effective conduct of business and facilitates amicable settlements of any potential disputes between employees and employers, providing assurances of project efficiency, continuity, and multiple public benefits; and
- Extent to which applicant demonstrates that they are a responsible employer, with ready access to a sufficient supply of appropriately skilled labor, and an effective plan to minimize the risk of labor disputes or disruptions.

Diversity, Equity, Inclusion, and Accessibility
- Extent to which the Community Benefits Plan includes specific and high-quality actions to meet DEIA goals, which may include DEIA recruitment procedures, supplier diversity plans, and other DEIA initiatives; and
- Quality of any partnerships and agreements with apprenticeship readiness programs, or community-based workforce training and support organizations serving workers facing systematic barriers to employment to facilitate participation in the project's construction and operations.

Justice40 Initiative
- Extent to which the Community Benefits Plan identifies: specific, measurable benefits for disadvantaged communities, how the benefits will flow to disadvantaged communities, and how negative environmental impacts affecting disadvantaged communities would be mitigated; and
- Extent to which the project would contribute portfolio-wide to meeting the objective that 40% of the overall benefits of climate and clean energy investments will flow to disadvantaged communities.

ii. Criteria for Replies to Reviewer Comments

DOE has not established separate criteria to evaluate Replies to Reviewer Comments. Instead, Replies to Reviewer Comments are attached to the original applications and evaluated as an extension of the Full Application.

B. Standards for Application Evaluation

Applications that are determined to be eligible will be evaluated in accordance with this FOA, by the standards set forth in SCEP's Notice of Objective Merit Review Procedure (76 Fed. Reg. 17846, March 31, 2011) and the guidance provided in the "DOE Merit Review Guide for Financial Assistance," effective October 2020, which is available at: https://www.energy.gov/sites/default/files/2020/09/f78/MRG%20SEPT%202020.pdf

C. Other Selection Factors

i. Program Policy Factors

In addition to the above criteria, the Selection Official may consider the following program policy factors in determining which Full Applications to select for award negotiations:

- The degree to which the proposed project optimizes the use of available FOA funding to achieve programmatic objectives;
- The degree to which the proposed project, or group of projects, represents geographic diversity;
- The degree to which the proposed project incorporates applicant or team members from Minority Serving Institutions and partnerships with Minority Business Enterprises, Minority Owned Businesses, Woman Owned Businesses, Veteran Owned Businesses, or Tribal Nations;
- The level of buy-in and participation by project participants as evidenced by letter(s) of commitment and community partnership documents;
- The degree to which the proposed project collectively represents diverse types and sizes of organizations served;
- The degree to which the proposed project has broad public support from the communities most directly impacted by the project; and

- The degree to which the project's solution or strategy will increase employment opportunities or maximize replication opportunities.

D. Evaluation and Selection Process

i. Overview

The evaluation process consists of multiple phases; each includes an initial eligibility review and a thorough technical review. Rigorous technical reviews of eligible submissions are conducted by reviewers that are experts in the subject matter of the FOA. Ultimately, the Selection Official considers the recommendations of the reviewers, along with other considerations such as program policy factors, in determining which applications to select.

ii. Pre-Selection Interviews

As part of the evaluation and selection process, SCEP may invite one or more applicants to participate in pre-selection interviews. Pre-selection interviews are distinct from and more formal than pre-selection clarifications (See Section IV.D.iii. of the FOA). The invited applicant(s) will meet with DOE representatives to provide clarification on the contents of the Full Applications and to provide DOE an opportunity to ask questions regarding the proposed project. The information provided by applicants to SCEP through pre-selection interviews contributes to SCEP's selection decisions.

SCEP will arrange to meet with the invited applicants virtually. Participation in pre-selection interviews with SCEP does not signify that applicants have been selected for award negotiations.

iii. Pre-Selection Clarification

SCEP may determine that pre-selection clarifications are necessary from one or more applicants. Pre-selection clarifications are distinct from and less formal than pre-selection interviews. These pre-selection clarifications will solely be for the purposes of clarifying the application. The pre-selection clarifications may occur before, during or after the merit review evaluation process. Information provided by an applicant that is not necessary to address the pre-selection clarification question will not be reviewed or considered. Typically, a pre-selection clarification will be carried out through either written response to SCEP's written clarification questions or video or conference calls with SCEP representatives.

The information provided by applicants to SCEP through pre-selection clarifications is incorporated in their applications and contributes to the merit review evaluation and SCEP's selection decisions. If SCEP contacts an applicant for pre-selection clarification purposes, it does not signify that the applicant has been selected for negotiation of award or that the applicant is among the top ranked applications.

SCEP will not reimburse applicants for expenses relating to the pre-selection clarifications, nor will these costs be eligible for reimbursement as pre-award costs.

iv. Recipient Responsibility and Qualifications

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

The applicant, at its option, may review information in the entity information domain in SAM.gov and comment on any information about itself that a federal awarding agency previously entered and is currently in the entity information domain in SAM.gov.

DOE will consider any written comments by the applicant, in addition to the other information in the entity information domain in SAM.gov, in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

v. Selection

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

E. Anticipated Notice of Selection and Award Negotiation Dates

SCEP anticipates notifying applicants selected for negotiation of award and negotiating awards by the dates provided on the cover page of this FOA.

V. Eligibility Information

To be considered for substantive evaluation, an applicant's submission must meet the criteria set forth below. If the application does not meet these eligibility requirements, it will be considered ineligible and removed from further evaluation.

A. Eligible Applicants

To be considered for substantive evaluation, an applicant's submission must meet the criteria set forth in Section 40542 of the Bipartisan Infrastructure Law. Specifically, an eligible ''applicant'' must be a nonprofit 501(c)(3) organization as described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code. Additionally, all renovations, repairs, or installations under this provision must be performed on building(s) owned and operated by a nonprofit 501(c)(3) organization(s).

Eligible applicants may have project partners and subrecipients critical to the implementation of the proposed project that are not 501(c)(3) nonprofits.

Prime Recipients only must be legally formed in the United States and have a physical location for business operations in the United States.

i. Domestic Entities

For-profit entities and educational institutions that are organized, chartered or incorporated (or otherwise formed) under the laws of a particular state or territory of the United States and have a physical location for business operations in the United States are eligible to apply for funding as a subrecipient.

State and local governmental entities, and tribal nations are eligible to apply for funding as a subrecipient.

DOE/NNSA FFRDCs are eligible to apply for funding as a subrecipient but are not eligible to apply as a Prime recipient.

Non-DOE/NNSA FFRDCs are eligible to participate as a subrecipient but are not eligible to apply as a Prime recipient.

Federal agencies and instrumentalities (other than DOE) are eligible to participate as a subrecipient but are not eligible to apply as a Prime recipient.

Entities banned from doing business with the United States government such as entities debarred, suspended, or otherwise excluded from or ineligible for participating in Federal programs are not eligible.

Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code of 1986 that engaged in lobbying activities after December 31, 1995, are not eligible to apply for funding.

ii. Foreign Entities

If a foreign entity applies for funding as a prime recipient, it must designate in the Full Application a subsidiary or affiliate incorporated (or otherwise formed) under the laws of a state or territory of the United States to be the prime recipient. The Full Application must state the nature of the corporate relationship between the foreign entity and domestic subsidiary or affiliate.

Foreign entities may request a waiver of the requirement to designate a subsidiary in the United States as the prime recipient in the Full Application (i.e., a foreign entity may request that it be the prime recipient). To do so, the applicant must submit an explicit written waiver request in the Full Application.

Appendix B lists the information that must be included in a request to waive this requirement. The applicant does not have the right to appeal EERE's decision concerning a waiver request.

iii. Incorporated Consortia

Domestic incorporated consortia are eligible to be considered for funding as a subrecipient. For consortia incorporated (or otherwise formed) under the laws of a state or territory of the United States, please refer to "Domestic Entities" above. For consortia incorporated in foreign countries, please refer to the requirements in "Foreign Entities" above.

Each consortium must have an internal governance structure and a written set of internal rules. Upon request, the consortium must provide a written description of its internal governance structure and its internal rules to the SCEP Contracting Officer.

iv. Unincorporated Consortia

Unincorporated Consortia must designate one member of the consortium to serve as the consortium representative. The consortium representative must be incorporated (or otherwise formed) under the laws of a state or territory of the United States. The eligibility of the consortium will be determined by the eligibility of the consortium representative under Section III.A. of the FOA.

Upon request, unincorporated consortia must provide the SCEP Contracting Officer with a collaboration agreement, commonly referred to as the articles of collaboration, which sets out the rights and responsibilities of each consortium member. This agreement binds the individual consortium members together and should include the consortium's:

- Management structure;
- Method of making payments to consortium members;
- Means of ensuring and overseeing members' efforts on the project;
- Provisions for members' cost sharing contributions; and
- Provisions for ownership and rights in intellectual property developed previously or under the agreement.

B. Cost Sharing

A Cost Share Reduction determination has been issued for this funding opportunity announcement pursuant to Section 988(c)(2) of the Energy Policy Act of 2005 that is applicable to eligible entities applying under this funding opportunity.

In accordance with the cost share reduction waiver, cost share must be at least 20% of the total allowable costs for commercial application projects (i.e., the sum of the government share, including FFRDC costs if applicable, and the recipient share of allowable costs equals the total allowable cost of the project) and must come from non-federal sources unless otherwise allowed by law. (See 2 CFR 200.306 and 2 CFR 910.130 for the applicable cost sharing requirements.)

To assist applicants in calculating proper cost share amounts, DOE has included a cost share information sheet and sample cost share calculation in Appendix A of this FOA.

i. Legal Responsibility

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

The Prime recipient is solely responsible for managing cost share contributions by the project team and enforcing cost share obligation assumed by project team members in subawards or related agreements.

ii. Cost Share Allocation

Each project team is free to determine how best to allocate the cost share requirement among the team members. The amount contributed by individual project team members may vary, as long as the cost share requirement for the project as a whole is met.

iii. Cost Share Types and Allowability

Every cost share contribution must be allowable under the applicable federal cost principles, as described in Section III.J. of the FOA. In addition, cost share must be verifiable upon submission of the Full Application.

Project teams may provide cost share in the form of cash or in-kind contributions. Cost share may be provided by the Prime recipient, subrecipients, or third parties (entities that do not have a role in performing the scope of work). Vendors/contractors may not provide cost share. Any partial donation of goods or services is considered a discount and is not allowable.

Cash contributions include, but are not limited to: personnel costs, fringe costs, supply and equipment costs, indirect costs and other direct costs.

In-kind contributions are those where a value of the contribution can be readily determined, verified and justified but where no actual cash is transacted in securing the good or service comprising the contribution. Allowable in-kind contributions include but are not limited to: the donation of volunteer time or the donation of space or use of equipment.

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

The recipient may not use the following sources to meet its cost share obligations including, but not limited to:

- Revenues or royalties from the prospective operation of an activity beyond the project period;
- Proceeds from the prospective sale of an asset of an activity;
- Federal funding or property (e.g., federal grants, equipment owned by the federal government); or
- Expenditures that were reimbursed under a separate federal program.

Project teams may not use the same cash or in-kind contributions to meet cost share requirements for more than one project or program.

Cost share contributions must be specified in the project budget, verifiable from the Prime recipient's records, and necessary and reasonable for proper and efficient accomplishment of the project. As all sources of cost share are considered part of total project cost, the cost share dollars will be scrutinized under the same federal regulations as federal dollars to the project. Every cost share contribution must be reviewed and approved in advance by the Contracting Officer and incorporated into the project budget before the expenditures are incurred.

Applicants are encouraged to refer to 2 CFR 200.306 and 2 CFR 910.130 for additional cost sharing requirements.

iv. Cost Share Contributions by FFRDCs

Because FFRDCs are funded by the federal government, costs incurred by FFRDCs generally may not be used to meet the cost share requirement. FFRDCs may contribute cost share only if the contributions are paid directly from the contractor's Management Fee or another non-federal source.

v. Cost Share Verification

Applicants are required to provide written assurance of their proposed cost share contributions in their Full Applications.

Upon selection for award negotiations, applicants are required to provide additional information and documentation regarding their cost share contributions. Please refer to Appendix A of the FOA.

vi. Cost Share Payment

DOE requires Prime recipients to contribute the cost share amount incrementally over the life of the award. Specifically, the Prime recipient's cost share for each billing period must always reflect the overall cost share ratio negotiated by the parties (i.e., the total amount of cost sharing on each invoice when considered cumulatively with previous invoices must reflect, at a minimum, the cost sharing percentage negotiated). As FFRDC funding will be provided directly to the FFRDC(s) by DOE, Prime recipients will be required to provide project cost share at a percentage commensurate with the FFRDC costs, on a budget period basis, resulting in a higher interim invoicing cost share ratio than the total award ratio.

In limited circumstances, and where it is in the government's interest, the DOE Contracting Officer may approve a request by the Prime recipient to meet its cost share requirements on a less frequent basis, such as monthly or quarterly. Regardless of the interval requested, the Prime recipient must be up-to-date on cost share at each interval. Such requests must be sent to the Contracting Officer during award negotiations and include the following information: (1) a detailed justification for the request; (2) a proposed schedule of payments, including amounts and dates; (3) a written commitment to meet that schedule; and (4) such evidence as necessary to demonstrate that the Prime recipient has complied with its cost share obligations to date. The Contracting Officer must approve all such requests before they go into effect.

C. Compliance Criteria

All applicant submissions must:

- Comply with the applicable content and form requirements listed in Section III. of the FOA;
- Include all required documents;
- Be successfully uploaded in Infrastructure eXCHANGE, https://infrastructure-exchange.energy.gov, including clicking the "Submit" button; and
- Be submitted by the deadline stated in the FOA.

SCEP will not review or consider submissions submitted through means other than Infrastructure eXCHANGE, submissions submitted after the applicable deadline, or incomplete submissions.

Applicants are strongly encouraged to submit their Letters of Intent, Full Applications, and Replies to Reviewer Comments at least 48 hours in advance of the submission deadline. Under normal conditions (i.e., at least 48 hours in advance of the submission deadline), applicants should allow at least 1 hour to submit a Letter of Intent, Full Application, or Reply to Reviewer Comments. Once the Letter of Intent, Full Application, or Reply to Reviewer Comments is submitted in Infrastructure eXCHANGE, applicants may revise or update that submission until the expiration of the applicable deadline. If changes are made to any of these documents, the applicant must resubmit the Letter of Intent, Full Application, or Reply to Reviewer Comments before the applicable deadline. SCEP will not extend the submission deadline for applicants that fail to submit required information by the applicable deadline due to server/connection congestion.

D. Responsiveness Criteria

All "Applications Specifically Not of Interest," as described in Section I.C. of the FOA, are deemed nonresponsive and are not reviewed or considered.

E. Other Eligibility Requirements

i. Requirements for DOE/NNSA and non-DOE/NNSA FFRDCs Included as a subrecipient

DOE/NNSA and non-DOE/NNSA FFRDCs may be proposed as a subrecipient on another entity's application subject to the following guidelines:

a. Authorization for non-DOE/NNSA FFRDCs
The federal agency sponsoring the FFRDC must authorize in writing the use of the FFRDC on the proposed project and this authorization must be submitted with the application. The use of a FFRDC must be consistent with its authority under its award.

b. Authorization for DOE/NNSA FFRDCs
The cognizant Contracting Officer (CO) for the FFRDC must authorize in writing the use of the FFRDC on the proposed project and this authorization must be submitted with the application. The following wording is acceptable for this authorization:

Authorization is granted for the Laboratory to participate in the proposed project. The work proposed for the Laboratory is consistent with or complementary to the missions of the Laboratory, and will not adversely impact execution of the DOE assigned programs at the Laboratory.

c. Funding, Cost Share and Subaward with FFRDCs

The value of and funding for the FFRDC portion of the work will not normally be included in the award. DOE/NNSA FFRDCs participating as a subrecipient on a project will be funded directly through the DOE field work proposal (WP) process. Non-DOE/NNSA FFRDCs participating as a subrecipient will be funded through an interagency agreement with the sponsoring agency.

Although the FFRDC portion of the work is excluded from the award, the applicant's cost share requirement will be based on the total cost of the project, including the applicant's, the subrecipient's, and the FFRDC's portions of the project.

Unless instructed otherwise by the DOE CO for the DOE award, all FFRDCs are required to enter into a Cooperative Research and Development Agreement[20] (CRADA) or, if the role of the DOE/NNSA FFRDC is limited to technical assistance and intellectual property is not anticipated to be generated from the DOE/NNSA FFRDC's work, a Technical Assistance Agreement (TAA), with at least the Prime recipient before any project work begins. Any questions regarding the use of a CRADA or TAA should be directed to the cognizant DOE field intellectual property (IP) counsel.

The CRADA or TAA is used to ensure accountability for project work and provide the appropriate management of intellectual property (IP), e.g., data protection and background IP. The CRADA or TAA must be agreed upon by all parties and submitted to DOE or other sponsoring agency, when applicable, for approval, or submitted to DOE for notice under the Master Scope of Work process, when applicable, using any DOE or other

[20] A cooperative research and development agreement is a contractual agreement between a national laboratory contractor and a private company or university to work together on research and development. For more information, see https://www.energy.gov/gc/downloads/doe-cooperative-research-and-development-agreements

sponsoring agency approved CRADA or TAA template without substantive changes by the time the award is made to the Prime recipient.

d. Responsibility
The Prime recipient will be the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues including, but not limited to disputes and claims arising out of any agreement between the Prime recipient and the FFRDC.

e. Limit on FFRDC Effort.

The scope of work to be performed by the FFRDC may not be more significant than the scope of work to be performed by the applicant.

F. Limitation on Number of Letters of Intent and Full Applications Eligible for Review

An entity may submit more than one Letter of Intent and Full Application to this FOA, provided that each application describes a unique, scientifically distinct project.

G. Questions Regarding Eligibility

DOE will not make eligibility determinations for potential applicants prior to the date on which applications to this FOA must be submitted. The decision whether to submit an application in response to this FOA lies solely with the applicant.

VI. Award Administration Information

A. Award Notices

i. Ineligible Submissions

Ineligible Full Applications will not be further reviewed or considered for award. The Contracting Officer will send a notification letter by email to the technical and administrative points of contact designated by the applicant in

Infrastructure eXCHANGE. The notification letter will state the basis upon which the Full Application is ineligible and not considered for further review.

ii. Full Application Notifications

SCEP will notify applicants of its determination via a notification letter by email to the technical and administrative points of contact designated by the applicant in Infrastructure eXCHANGE. The notification letter will inform the applicant whether or not its Full Application was selected for award negotiations. Alternatively, SCEPDOE may notify one or more applicants that a final selection determination on particular Full Applications will be made at a later date, subject to the availability of funds or other factors.

iii. Successful Applicants

Receipt of a notification letter selecting a Full Application for award negotiations does not authorize the applicant to commence performance of the project. If an application is selected for award negotiations, it is not a commitment by SCEP to issue an award. Applicants do not receive an award until award negotiations are complete and the Contracting Officer executes the funding agreement, accessible by the Prime recipient in FedConnect.

The award negotiation process will take approximately 60 days. Applicants must designate a primary and a backup point-of-contact in Infrastructure eXCHANGE with whom SCEP will communicate to conduct award negotiations. The applicant must be responsive during award negotiations (i.e., provide requested documentation) and meet the negotiation deadlines. If the applicant fails to do so or if award negotiations are otherwise unsuccessful, SCEP will cancel the award negotiations and rescind the Selection. SCEP reserves the right to terminate award negotiations at any time for any reason.

Please refer to Section III.J.ii. of the FOA for guidance on pre-award costs.

iv. Alternate Selection Determinations

In some instances, an applicant may receive a notification that its application was not selected for award and SCEP designated the application to be an alternate. As an alternate, SCEP may consider the Full Application for federal funding in the future. A notification letter stating the Full Application is designated as an alternate does not authorize the applicant to commence performance of the project. SCEP may ultimately determine to select or not select the Full Application for award negotiations.

v. Unsuccessful Applicants

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

B. Administrative and National Policy Requirements

i. Registration Requirements

There are several one-time actions before submitting an application in response to this FOA, and it is vital that applicants address these items as soon as possible. Some may take several weeks, and failure to complete them could interfere with an applicant's ability to apply to this FOA, or to meet the negotiation deadlines and receive an award if the application is selected. These requirements are as follows:

1. **SCEP Funding Opportunity Infrastructure Exchange**
   Register and create an account on Infrastructure eXCHANGE at https://infrastructure-exchange.energy.gov . This account will then allow the user to register for any open FOAs that are currently in Infrastructure eXCHANGE

   To access Infrastructure eXCHANGE, potential applicants are required to have a Login.gov account. As part of the eXCHANGE registration process, new users will be directed to create an account in Login.gov. Please note that the email address associated with Login.gov must match the email address associated with the eXCHANGE account. For more information, refer to the eXCHANGE Multi-Factor Authentication (MFA) Quick Guide in the https://infrastructure-exchange.energy.gov/Manuals.aspx of eXCHANGE.

   It is recommended that each organization or business unit, whether acting as a team or a single entity, use only one account as the contact point for each submission. Applicants should also designate backup points of contact so they may be easily contacted if deemed necessary. **This step is required to apply to this FOA.** The Infrastructure eXCHANGE registration does not have a delay; however, **the remaining registration requirements below could take several weeks to process and are necessary for a potential applicant to receive an award under this FOA.**

2. **System for Award Management**

Register with the SAM at https://www.sam.gov. Designating an Electronic Business Point of Contact (EBiz POC) and obtaining a special password called a Marketing Partner ID Number (MPIN) are important steps in SAM registration. Please update your SAM registration annually.

3. **FedConnect**
   Register in FedConnect at https://www.fedconnect.net. To create an organization account, your organization's SAM MPIN is required. For more information about the SAM MPIN or other registration requirements, review the FedConnect Ready, Set, Go! Guide at https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf.

4. **Grants.gov**
   Register in Grants.gov (http://www.grants.gov) to receive automatic updates when Amendments to this FOA are posted. However, please note that Letters of Intent and Full Applications will not be accepted through Grants.gov.

5. **Electronic Authorization of Applications and Award Documents**
   Submission of an application and supplemental information under this FOA through electronic systems used by the DOE, including Infrastructure eXCHANGE and FedConnect, constitutes the authorized representative's approval and electronic signature.

ii. Award Administrative Requirements

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

iii. Foreign National Participation

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

foreign national can participate in the performance of any work under an award.

DOE may elect to deny foreign national's participation in the award. Likewise, DOE may elect to deny a foreign national's access to a DOE sites, information, technologies, equipment, programs, or personnel.

iv. Subaward and Executive Reporting

Additional administrative requirements necessary for DOE grants and cooperative agreements to comply with the Federal Funding and Transparency Act of 2006 (FFATA) are contained in 2 CFR Part 170. Prime recipients must register with the new FFATA Subaward Reporting System database and report the required data on their first tier subrecipients. Prime recipients must report the executive compensation for their own executives as part of their registration profile in SAM.

v. National Policy Requirements

The National Policy Assurances that are incorporated as a term and condition of award are located at: http://www.nsf.gov/awards/managing/rtc.jsp.

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

SCEP's decision whether and how to distribute federal funds under this FOA is subject to NEPA (42 U.S.C. § 4321, *et seq.*). NEPA requires federal agencies to integrate environmental values into their decision-making processes by considering the potential environmental impacts of their proposed actions. For additional background on NEPA, please see DOE's NEPA website, at https://www.energy.gov/nepa.

While NEPA compliance is a federal agency responsibility and the ultimate decisions remain with the federal agency, all recipients selected for an award will be required to assist in the timely and effective completion of the NEPA process in the manner most pertinent to their proposed project. If DOE determines certain records must be prepared to complete the NEPA review process (e.g., biological evaluations or environmental assessments), the recipient may be required to prepare the records and the costs to prepare the necessary records may be included as part of the project costs.

All recipients selected for an award must comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) prior to using

Federal funds. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. DOE and recipients selected for an award must consider the effects on historic properties, pursuant to Section 106 of the NHPA. To streamline these required reviews, DOE carries out each of these reviews under the umbrella of its NEPA review.

Applicants must be aware that Awardees in States or Territories with a DOE-executed Programmatic Agreement (PA) must adhere to all the Stipulations outlined in the PA, including reporting requirements. Executed PAs are available on this website: https://www.energy.gov/eere/wipo/historic-preservation-executed-programmatic-agreements. So long as the proposed project/undertaking is within a State or Territory that has executed a Programmatic Agreement, the terms of the Programmatic Agreement will apply to all DOE Recipients and subrecipients within the applicable state, and their activities. Applicants that do NOT have a PA which includes Guam and Tribal governments, must follow the added restrictions in a NEPA determination to ensure Section 106 compliance.

vii. Flood Resilience

Applications should indicate whether the proposed project location(s) is within a floodplain, how the floodplain was defined, and how future flooding will factor into the project's design. The base floodplain long used for planning has been the 100-year floodplain, that is, a floodplain with a 1.0 percent chance of flooding in any given year. As directed by Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (2015), Federal agencies, including DOE, continue to avoid development in a floodplain to the extent possible. When doing so is not possible, Federal agencies are directed to "expand management from the current base flood level to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and ensure that projects funded with taxpayer dollars last as long as intended." The higher flood elevation is based on one of three approaches: climate-informed science (preferred), freeboard value, or 0.2 percent annual flood change (500-year floodplain). EO 13690 and related information is available at: https://www.energy.gov/nepa/articles/eo-13690-establishing-federal-flood-risk-management-standard-and-process-further.

viii. Applicant Representations and Certifications

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

2. **Corporate Felony Conviction and Federal Tax Liability Representations**
   In submitting an application in response to this FOA, the applicant represents that:

   a. It is **not** a corporation that has been convicted of a felony criminal violation under any federal law within the preceding 24 months; and

   b. It is **not** a corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

   For purposes of these representations the following definitions apply:

   A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.

3. **Nondisclosure and Confidentiality Agreements Representations**
   In submitting an application in response to this FOA the applicant represents that:

   a. It **does not and will not** require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contactors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.

b. It **does not and will not** use any federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

(1) *"These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling."*

(2) The limitation above shall not contravene requirements applicable to Standard Form 312 Classified Information Nondisclosure Agreement (https://fas.org/sgp/othergov/sf312.pdf), Form 4414 Sensitive Compartmented Information Disclosure Agreement (https://fas.org/sgp/othergov/intel/sf4414.pdf), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

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

ix. Statement of Federal Stewardship

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

x. Statement of Substantial Involvement

SCEP has substantial involvement in work performed under awards made as a result of this FOA. SCEP does not limit its involvement to the administrative requirements of the award. Instead, SCEP has substantial involvement in the direction and redirection of the technical aspects of the project as a whole. Substantial involvement includes, but is not limited to, the following:

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

xi. Subject Invention Utilization Reporting

To ensure that Prime recipients and subrecipients holding title to subject inventions are taking the appropriate steps to commercialize subject inventions, SCEP may require that each Prime recipient holding title to a subject invention submit annual reports for ten (10) years from the date the subject invention was disclosed to DOE on the utilization of the subject invention and efforts made by Prime recipient or their licensees or assignees to stimulate such utilization. The reports must include information regarding the status of development, date of first commercial sale or use, gross

royalties received by the Prime recipient, and such other data and information as SCEP may specify.

xii. Intellectual Property Provisions

The standard DOE financial assistance intellectual property provisions applicable to the various types of recipients are located at http://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards.

xiii. Reporting

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

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

- New manufacturing production, or recycling capacity.
- Jobs data, including:
  - Number and types of jobs provided, wages and benefits paid;
  - Demographics of workforce including local hires;
  - Efforts to minimize risks of labor disputes and disruptions
  - Contributions to training; certificates and training credentials received by employees; ratio of apprentice-to-journey level workers employed; and
  - Number of trainings completed, trainees places in full-time employment, or number of trainings with workforce partnerships involving employers, community-based organizations, or labor unitions.
- Justice and Equity data, including:
  - Minority Business Enterprises, Minority Owned Businesses, Woman Owned Businesses and Veteran Owned Businesses acting as vendors and sub-contractors for bids on supplies, services and equipment;
  - Value, number, and type of partnerships with MSIs;
  - Stakeholder engagement events, consent-based siting activities; and
  - Other relevant indicators from the Community Benefits Plan.

- Number and type of energy efficient and clean energy equipment installed.
- Funding leveraged, follow-on-funding, Intellectual Property (IP) Generation and IP Utilization.

xiv. Go/No-Go Review

Each project selected under this FOA will be subject to a periodic project evaluation referred to as a Go/No-Go Review. A Go/No-Go Review is a risk management tool and a project management best practice to ensure that, for the current phase or period of performance, technical success is definitively achieved and potential for success in future phases or periods of performance is evaluated, prior to actually beginning the execution of future phases. At the Go/No-Go decision points, DOE will evaluate project performance, project schedule adherence, the extent milestone objectives are met, compliance with reporting requirements, and overall contribution to the program goals and objectives. Federal funding beyond the Go/No-Go decision point (continuation funding) is contingent upon (1) availability of federal funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) recipient's technical progress compared to the Milestone Summary Table stated in Attachment 1 of the award; (4) recipient's submittal of required reports; (5) recipient's compliance with the terms and conditions of the award; (6) DOE's Go/No-Go decision; (7) the recipient's submission of a continuation application[21]; and (8) written approval of the continuation application by the Contracting Officer.

As a result of the Go/No-Go Review, DOE may, at its discretion, authorize the following actions: (1) continue to fund the project, contingent upon the availability of funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority; (2) recommend redirection of work under the project; (3) place a hold on federal funding for

[21] A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least ninety (90) days before the end of each budget period, the recipient must submit its continuation application, which includes the following information:

i. A progress report on the project objectives, including significant findings, conclusions, or developments, and an estimate of any unobligated balances remaining at the end of the budget period. If the remaining unobligated balance is estimated to exceed 20 percent of the funds available for the budget period, explain why the excess funds have not been obligated and how they will be used in the next budget period.
ii. A detailed budget and supporting justification if there are changes to the negotiated budget, or a budget for the upcoming budget period was not approved at the time of award.
iii. A description of any planned changes from the SOPO and/or Milestone Summary Table.

the project, pending further supporting data or funding; or (4) discontinue funding the project because of insufficient progress, change in strategic direction, or lack of funding.

The Go/No-Go decision is distinct from a non-compliance determination. In the event a recipient fails to comply with the requirements of an award, DOE may take appropriate action, including but not limited to, redirecting, suspending or terminating the award.

xv. Conference Spending

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

xvi. Uniform Commercial Code (UCC) Financing Statements

Per 2 CFR 910.360 (Real Property and Equipment) when a piece of equipment is purchased by a for-profit recipient or subrecipient with federal funds, and when the federal share of the financial assistance agreement is more than $1,000,000, the recipient or subrecipient must:

Properly record, and consent to the Department's ability to properly record if the recipient fails to do so, UCC financing statement(s) for all equipment in excess of $5,000 purchased with project funds. These financing statement(s) must be approved in writing by the Contracting Officer prior to the recording, and they shall provide notice that the recipient's title to all equipment (not real property) purchased with federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the government retains an undivided reversionary interest in the equipment. The UCC financing statement(s) must be filed before the Contracting Officer may reimburse the recipient for the federal share of the equipment unless otherwise provided for in the relevant financial assistance agreement. The recipient shall further make any amendments to the financing statements or additional recordings, including appropriate continuation statements, as necessary or as the Contracting Officer may direct.

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

States, local governments, or other public entities may not condition sub-awards in a manner that would discriminate, or disadvantage sub-recipients based on their religious character.

xviii. Participants and Collaborating Organizations

If selected for award negotiations, the selected applicant must submit a list of personnel who are proposed to work on the project, both at the recipient and subrecipient level and a list of proposed collaborating organizations prior to award. Recipients will have an ongoing responsibility to notify DOE of changes to the personnel and collaborating organizations and submit updated information during the life of the award.

xix. Interim Conflict of Interest Policy for Financial Assistance

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy)[22] is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under the DOE financial assistance award. The term "Investigator" means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. Recipients must flow down the requirements of the interim COI Policy to any subrecipient non-federal entities. Further, for DOE funded projects, the recipient must include all financial conflicts of interest (FCOI) (i.e., managed and unmanaged/unmanageable) in their initial and ongoing FCOI reports.

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

[22] DOE's interim COI Policy can be found at PF 2022-17 FAL 2022-02 Department of Energy Interim Conflict of Interest Policy Requirements for Financial Assistance.

plan for FCOIs; and provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/ unmanageable). Recipients will have 180 days from the date of the award to come into full compliance with the other requirements set forth in DOE's interim COI Policy. Prior to award, the applicant must certify that it is, or will be within 180 days of the award, compliant with all requirements in the COI Policy.

xx. Fraud, Waste and Abuse

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of the Department's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of DOE activities to include grants, cooperative agreements, loans, and contracts.

The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit https://www.energy.gov/ig/ig-hotline.

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

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339. (See also 2 CFR part 180, 31 U.S.C. § 3321, and 41 U.S.C. § 2313.) [85 FR 49539, Aug. 13, 2020]

Applicants and subrecipients (if applicable) are encouraged to allocate sufficient costs in the project budget to cover the costs associated for personnel and data infrastructure needs to support performance management and program evaluation needs including

but not limited to independent program and project audits to mitigate risks for fraud, waste, and abuse.

xxi. Human Subjects Research

Research involving human subjects, biospecimens, or identifiable private information conducted with DOE funding is subject to the requirements of DOE Order 443.1C, Protection of Human Research Subjects, 45 CFR Part 46, Protection of Human Subjects (subpart A which is referred to as the "Common Rule"), and 10 CFR Part 745, Protection of Human Subjects. Additional information on the DOE Human Subjects Research Program can be found at: HUMAN SUBJECTS Human Subjects Pr... | U.S. DOE Office of Science (SC) (osti.gov).

VII. Questions/Agency Contacts

Upon the issuance of a FOA, SCEP personnel are prohibited from communicating (in writing or otherwise) with applicants regarding the FOA except through the established question and answer process as described below. Specifically, questions regarding this FOA must be submitted to: NonprofitsFOA@hq.doe.gov. Questions must be submitted not later than 3 business days prior to the application due date and time. Please note, feedback on individual concepts will not be provided through Q&A.

All questions and answers related to this FOA will be posted on Infrastructure eXCHANGE at: https://infrastructure-exchange.energy.gov/ **You must first select this specific FOA Number to view the questions and answers specific to this FOA**. SCEP will attempt to respond to a question within 3 business days, unless a similar question and answer has already been posted on the website.

Questions related to the registration process and use of the Infrastructure eXCHANGE website should be submitted to: InfrastructureExchangeSupport@hq.doe.gov

A. FOA Modifications

Amendments to this FOA will be posted on the Infrastructure eXCHANGE website and the Grants.gov system. However, you will only receive an email when an amendment or a FOA is posted on these sites if you register for email notifications for this FOA in Grants.gov. SCEP recommends that you register as soon after the release of the FOA as possible to ensure you receive timely notice of any amendments or other FOAs.

B. Government Right to Reject or Negotiate

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

C. Commitment of Public Funds

The Contracting Officer is the only individual who can make awards or commit the government to the expenditure of public funds. A commitment by anyone other than the Contracting Officer, either express or implied, is invalid.

D. Treatment of Application Information

Applicants should not include business sensitive (e.g., commercial or financial information that is privileged or confidential), trade secrets, proprietary, or otherwise confidential information in their application unless such information is necessary to convey an understanding of the proposed project or to comply with a requirement in the FOA. Applicants are advised to not include any critically sensitive proprietary detail.

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

If an applicant chooses to submit business sensitive, trade secrets, proprietary, or otherwise confidential information, the applicant must provide **two copies** of the submission (e.g., Letter of Intent, Full Application). The first copy should be marked, "non-confidential" with the information believed to be confidential deleted. The second copy should be marked "confidential" and must clearly and conspicuously identify the business sensitive, trade secrets, proprietary, or otherwise confidential information and must be marked as described below.

Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose as authorized by law.

The cover sheet of the Full Application, and other applicant submission must be marked as follows and identify the specific pages containing business sensitive, trade secrets, proprietary, or otherwise confidential information:

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

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

E. Evaluation and Administration by Non-Federal Personnel

In conducting the merit review evaluation, the Go/No-Go Reviews and Peer Reviews, the government may seek the advice of qualified non-federal personnel as reviewers. The government may also use non-federal personnel to conduct routine, nondiscretionary administrative activities, including SCEP contractors. The applicant, by submitting its application, consents to the use of non-federal reviewers/administrators. Non-federal reviewers must sign conflict of interest (COI) and non-disclosure acknowledgements (NDA) prior to reviewing an application. Non-federal personnel conducting administrative activities must sign an NDA.

F. Notice Regarding Eligible/Ineligible Activities

Eligible activities under this FOA include those which describe and promote the understanding of scientific and technical aspects of specific energy technologies, but not those which encourage or support political activities such as the collection and dissemination of information related to potential, planned or pending legislation.

G. Notice of Right to Conduct a Review of Financial Capability

SCEP reserves the right to conduct an independent third-party review of financial capability for applicants that are selected for negotiation of award (including personal credit information of principal(s) of a small business if there is insufficient information to determine financial capability of the organization).

H. Requirement for Full and Complete Disclosure

Applicants are required to make a full and complete disclosure of all information requested. Any failure to make a full and complete disclosure of the requested information may result in:

- The termination of award negotiations;
- The modification, suspension, and/or termination of a funding agreement;
- The initiation of debarment proceedings, debarment, and/or a declaration of ineligibility for receipt of federal contracts, subcontracts, and financial assistance and benefits; and
- Civil and/or criminal penalties.

I. Retention of Submissions

SCEP expects to retain copies of all Full Applications and other submissions. No submissions will be returned. By applying to SCEP for funding, applicants consent to SCEP's retention of their submissions.

J. Title to Subject Inventions

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

- Domestic Small Businesses, Educational Institutions, and Nonprofits: Under the Bayh-Dole Act (35 U.S.C. § 200 et seq.), domestic small businesses,

educational institutions, and nonprofits may elect to retain title to their subject inventions.

- All other parties: The Federal Non-Nuclear Energy Act of 1974, 42. U.S.C. § 5908, provides that the government obtains title to new inventions unless a waiver is granted (see below).
- Class Patent Waiver:

Under 42 U.S.C. § 5908, title to subject inventions vests in the United States government and large businesses and foreign entities do not have the automatic right to elect to retain title to subject inventions. However, SCEP may issue "class patent waivers" under which large businesses and foreign entities that meet certain stated requirements may elect to retain title to their subject inventions.

- Advance and Identified Waivers: For an applicant not covered by a Class Patent Waiver or the Bayh-Dole Act, the applicant may request a patent waiver that will cover subject inventions that may be invented under the award, in advance of or within 30 days after the effective date of the award. Even if an advance waiver is not requested or the request is denied, the recipient will have a continuing right under the award to request a waiver for identified inventions, i.e., individual subject inventions that are disclosed to SCEP within the timeframes set forth in the award's intellectual property data terms and conditions. Any patent waiver that may be granted is subject to certain terms and conditions in 10 CFR 784.

- DEC: On June 07, 2021, DOE approved a DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES (DEC) UNDER THE BAYH-DOLE ACT TO FURTHER PROMOTE DOMESTIC MANUFACTURE OF DOE SCIENCE AND ENERGY TECHNOLOGIES. In accordance with this DEC, all awards, including sub-awards, under this FOA shall include the U.S. Competitiveness Provision in accordance with Section VI.B.xx. U.S. Manufacturing Commitments of this FOA. A copy of the DEC can be found at https://www.energy.gov/gc/determination-exceptional-circumstances-decs. Pursuant to 37 CFR 401.4, any nonprofit organization or small business firm as defined by 35 U.S.C. § 201 affected by any DEC has the right to appeal it by providing written notice to DOE within 30 working days from the time it receives a copy of the determination.

- DOE may issue and publish on the website above further DECs prior to the issuance of awards under this FOA. DOE may require additional submissions or requirements as authorized by any applicable DEC.

K. Government Rights in Subject Inventions

Where Prime recipients and subrecipients retain title to subject inventions, the United States government retains certain rights.

Government Use License

The United States government retains a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world. This license extends to contractors doing work on behalf of the government.

March-In Rights

The United States government retains march-in rights with respect to all subject inventions. Through "march-in rights," the government may require a Prime recipient or subrecipient who has elected to retain title to a subject invention (or their assignees or exclusive licensees), to grant a license for use of the invention to a third party. In addition, the government may grant licenses for use of the subject invention when a Prime recipient, subrecipient, or their assignees and exclusive licensees refuse to do so.

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

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

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

L. Rights in Technical Data

Data rights differ based on whether data is first produced under an award or instead was developed at private expense outside the award.

"Limited Rights Data": The United States government will not normally require delivery of confidential or trade secret-type technical data developed solely at private expense prior to issuance of an award, except as necessary to monitor technical progress and evaluate the potential of proposed technologies to reach specific technical and cost metrics.

Government Rights in Technical Data Produced Under Awards: The United States government retains unlimited rights in technical data produced under government financial assistance awards, including the right to distribute to the public. One exception to the foregoing is that invention disclosures may be protected from public disclosure for a reasonable time in order to allow for filing a patent application.

M. Copyright

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

N. Export Control

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the United States to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of federal agencies and regulations that govern exports that are collectively referred to as "Export Controls". All recipients and subrecipients are responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under a resulting award.

The recipient must immediately report to DOE any export control violations related to the project funded under the DOE award, at the recipient or

subrecipient level, and provide the corrective action(s) to prevent future violations.

O. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (federal funds and recipient cost share) to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses *covered telecommunications equipment or services* as a substantial or essential component of any system, or as critical technology as part of any system. As described in Section 889 of Public Law 115-232, *covered telecommunications equipment* is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

P. Personally Identifiable Information (PII)

All information provided by the applicant must to the greatest extent possible exclude PII. The term "PII" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name. (See OMB Memorandum M-17-12 dated January 3, 2017)

By way of example, applicants must screen resumes to ensure that they do not contain PII such as personal addresses, personal landline/cell phone numbers, and personal emails. **Under no circumstances should Social Security Numbers (SSNs) be included in the application**. Federal agencies are prohibited from the collecting, using, and displaying unnecessary SSNs. (See the Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283, Dec 18, 2014; 44 U.S.C. § 3551).

Q. Annual Independent Audits

If a for-profit entity is a Prime recipient and has expended $750,000 or more of DOE awards during the entity's fiscal year, an annual compliance audit performed by an independent auditor is required. For additional information, please refer to 2 CFR 910.501 and Subpart F.

If an educational institution, non-profit organization, or state/local government is a Prime recipient or subrecipient and has expended $750,000 or more of federal awards during the non-federal entity's fiscal year, then a Single or Program-Specific Audit is required. For additional information, please refer to 2 CFR 200.501 and Subpart F.

Applicants and subrecipients (if applicable) should propose sufficient costs in the project budget to cover the costs associated with the audit. DOE will share in the cost of the audit at its applicable cost share ratio.

R. Informational Webinar

SCEP will conduct one informational webinar during the FOA process. It will be held after the initial FOA release but before the due date for Letters of Intent.

Attendance is not mandatory and will not positively or negatively impact the overall review of any applicant submissions. As the webinar will be open to all applicants who wish to participate, applicants should refrain from asking questions or communicating information that would reveal confidential and/or proprietary information specific to their project. Specific dates for the webinar can be found on the cover page of the FOA.

APPENDIX A – COST SHARE INFORMATION

Cost Sharing or Cost Matching

The terms "cost sharing" and "cost matching" are often used synonymously. Even the DOE Financial Assistance Regulations, 2 CFR 200.306, use both of the terms in the titles specific to regulations applicable to cost sharing. DOE almost always uses the term "cost sharing," as it conveys the concept that non-federal share is calculated as a percentage of the Total Project Cost. An exception is the State Energy Program Regulation, 10 CFR 420.12, State Matching Contribution. Here "cost matching" for the non-federal share is calculated as a percentage of the federal funds only, rather than the Total Project Cost.

How Cost Sharing Is Calculated

As stated above, cost sharing is calculated as a percentage of the Total Project Cost. FFRDC costs must be included in Total Project Costs. The following is an example of how to calculate cost sharing amounts for a project with $1,000,000 in federal funds with a minimum 20% non-federal cost sharing requirement:

- Formula: Federal share ($) divided by federal share (%) = Total Project Cost
  Example: $1,000,000 divided by 80% = $1,250,000

- Formula: Total Project Cost ($) minus federal share ($) = Non-federal share ($)
  Example: $1,250,000 minus $1,000,000 = $250,000

- Formula: Non-federal share ($) divided by Total Project Cost ($) = Non-federal share (%)
  Example: $250,000 divided by $1,250,000 = 20%

What Qualifies For Cost Sharing

While it is not possible to explain what specifically qualifies for cost sharing in one or even a couple of sentences, in general, if a cost is allowable under the cost principles applicable to the organization incurring the cost and is eligible for reimbursement under a DOE grant or cooperative agreement, then it is allowable as cost share. Conversely, if the cost is not allowable under the cost principles and not eligible for reimbursement, then it is not allowable as cost share. In addition, costs may not be counted as cost share if they are paid by the federal government under another award unless authorized by federal statute to be used for cost sharing.

The rules associated with what is allowable as cost share are specific to the type of organization that is receiving funds under the grant or cooperative agreement, though are generally the same for all types of entities. The specific rules applicable to:

- FAR Part 31 for For-Profit entities, (48 CFR Part 31); and
- 2 CFR Part 200 Subpart E - Cost Principles for all other non-federal entities.

In addition to the regulations referenced above, other factors may also come into play such as timing of donations and length of the project period. For example, the value of ten years of donated maintenance on a project that has a project period of five years would not be fully allowable as cost share. Only the value for the five years of donated maintenance that corresponds to the project period is allowable and may be counted as cost share.

Additionally, DOE generally does not allow pre-award costs for either cost share or reimbursement when these costs precede the signing of the appropriation bill that funds the award. In the case of a competitive award, DOE generally does not allow pre-award costs prior to the signing of the Selection Statement by the DOE Selection Official.

General Cost Sharing Rules on a DOE Award

1. Cash Cost Share – encompasses all contributions to the project made by the recipient or subrecipient(s), for costs incurred and paid for during the project. This includes when an organization pays for personnel, supplies, equipment for their own company with organizational resources. If the item or service is reimbursed for, it is cash cost share. All cost share items must be necessary to the performance of the project.

2. In-Kind Cost Share – encompasses all contributions to the project made by the recipient or subrecipient(s) that do not involve a payment or reimbursement and represent donated items or services. In-Kind cost share items include volunteer personnel hours, donated existing equipment, donated existing supplies. The cash value and calculations thereof for all In-Kind cost share items must be justified and explained in the Cost Share section of the project Budget Justification. All cost share items must be necessary to the performance of the project. If questions exist, consult your DOE contact before filling out the In-Kind cost share section of the Budget Justification.

3. Funds from other federal sources MAY NOT be counted as cost share. This prohibition includes FFRDC subrecipients. Non-federal sources include any source not originally derived from federal funds. Cost sharing commitment letters from subrecipients must be provided with the original application.

4. Fee or profit, including foregone fee or profit, are not allowable as project costs (including cost share) under any resulting award. The project may only incur those costs that are allowable and allocable to the project (including cost share) as determined in accordance with the applicable cost principles prescribed in FAR Part 31 for For-Profit entities and 2 CFR Part 200 Subpart E - Cost Principles for all other non-federal entities.

DOE Financial Assistance Rules 2 CFR Part 200 as amended by 2 CFR Part 910

As stated above, the rules associated with what is allowable cost share are generally the same for all types of organizations. Following are the rules found to be common, but again, the specifics are contained in the regulations and cost principles specific to the type of entity:

(A) Acceptable contributions. All contributions, including cash contributions and third-party in-kind contributions, must be accepted as part of the Prime recipient's cost sharing if such contributions meet all of the following criteria:

(1) They are verifiable from the recipient's records.

(2) They are not included as contributions for any other federally-assisted project or program.

(3) They are necessary and reasonable for the proper and efficient accomplishment of project or program objectives.

(4) They are allowable under the cost principles applicable to the type of entity incurring the cost as follows:

a. For-profit organizations. Allowability of costs incurred by for-profit organizations and those nonprofit organizations listed in Attachment C to OMB Circular A–122 is determined in accordance with the for-profit cost principles in 48 CFR Part 31 in the FAR, except that patent prosecution costs are not allowable unless specifically authorized in the award document. (v) Commercial Organizations. FAR Subpart 31.2—Contracts with Commercial Organizations; and

b. Other types of organizations. For all other non-federal entities, allowability of costs is determined in accordance with 2 CFR Part 200 Subpart E.

(5) They are not paid by the federal government under another award unless authorized by federal statute to be used for cost sharing or matching.

(6) They are provided for in the approved budget.

(B) Valuing and documenting contributions

(1) Valuing recipient's property or services of recipient's employees. Values are established in accordance with the applicable cost principles, which mean that amounts chargeable to the project are determined on the basis of costs incurred. For real property or equipment used on the project, the cost principles authorize depreciation or use charges. The full value of the item may be applied when the item will be consumed in the performance of the award or fully depreciated by the end of the award. In cases where the full value of a donated capital asset is to be applied as cost sharing or matching, that full value must be the lesser or the following:

a. The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

b. The current fair market value. If there is sufficient justification, the Contracting Officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The Contracting Officer may accept the use of any reasonable basis for determining the fair market value of the property.

(2) Valuing services of others' employees. If an employer other than the recipient furnishes the services of an employee, those services are valued at the employee's regular rate of pay, provided these services are for the same skill level for which the employee is normally paid.

(3) Valuing volunteer services. Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those markets in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) Valuing property donated by third parties.

a. Donated supplies may include such items as office supplies or laboratory supplies. Value assessed to donated supplies included in the cost sharing or matching share must be reasonable and must not exceed the fair market value of the property at the time of the donation.

b. Normally only depreciation or use charges for equipment and buildings may be applied. However, the fair rental charges for land and the full value of equipment or other capital assets may be allowed, when they will be consumed in the performance of the award or fully depreciated by the end of the award, provided that the Contracting Officer has approved the charges. When use charges are applied, values must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

i. The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

ii. The value of loaned equipment must not exceed its fair rental value.

(5) Documentation. The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

a. Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

b. The basis for determining the valuation for personal services and property must be documented.

APPENDIX B – WAIVER REQUESTS FOR: 1. FOREIGN ENTITY PARTICIPATION; AND 2. FOREIGN WORK

1. Waiver for Foreign Entity Participation as the Subrecipient

As set forth in Section V.A., all subrecipients receiving funding under this FOA must be incorporated (or otherwise formed) under the laws of a state or territory of the United States and have a physical location for business operations in the United States. To request a waiver of this requirement, an applicant must submit an explicit waiver request in the Full Application.

Waiver Criteria

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

a. Its participation is in the best interest of the United States industry and United States economic development;
b. The project team has appropriate measures in place to control sensitive information and protect against unauthorized transfer of scientific and technical information;
c. Adequate protocols exist between the United States subsidiary and its foreign parent organization to comply with export control laws and any obligations to protect proprietary information from the foreign parent organization;
d. The work is conducted within the United States and the entity acknowledges and demonstrates that it has the intent and ability to comply with the U.S. Competitiveness Provision (see Section III.B.xii.); and
e. The foreign entity will satisfy other conditions that may be deemed necessary by DOE to protect United States government interests.

Content for Waiver Request

A Foreign Entity waiver request must include the following:

a. Information about the entity(ies) involved in the work proposed to be conducted outside the U.S. (i.e., entity seek a waiver and the entity(ies) that will conduct the work): name, point of contact, and proposed type of involvement in the project;
b. Country of incorporation, the extent of the ownership/level control by foreign entities, whether the entity is state owned or controlled, a summary of the ownership breakdown of the foreign entity and the percentage of ownership/control by foreign entities, foreign shareholders, foreign state or foreign individuals;

c. The rationale for proposing a foreign entity participate (must address criteria above);
d. A description of the project's anticipated contributions to the United States economy;
    - How the project will benefit United States research, development and manufacturing, including contributions to employment in the United States and growth in new markets and jobs in the United States;
    - How the project will promote domestic American manufacturing of products and/or services;
e. A description of how the foreign entity's participation is essential to the project;
f. A description of the likelihood of Intellectual Property (IP) being created from the work and the treatment of any such IP; and
g. Countries where the work will be performed (Note: if any work is proposed to be conducted outside the United States, the applicant must also complete a separate request foreign work waiver).

DOE may also require:

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

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

As set forth in Section III.J.iii., all work under funding under this FOA must be performed in the United States. To seek a waiver of the Performance of Work in the United States requirement, the applicant must submit an explicit waiver request in the Full Application. A separate waiver request must be submitted for each entity proposing performance of work outside of the United States.

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

1. The rationale for performing the work outside the United States ("foreign work");

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

DOE may require additional information before considering the waiver request.

DOE's decision concerning a waiver request is not appealable.

APPENDIX C – REQUIRED USE OF AMERICAN IRON, STEEL, MANUFACTURED PRODUCTS, AND CONSTRUCTION MATERIALS BUY AMERICA REQUIREMENTS FOR INFRASTRUCTURE PROJECTS

A. Definitions

For purposes of the Buy America requirements, based both on the statute and OMB Guidance Document dated April 18, 2022, the following definitions apply:

Construction materials includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives[23] —that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

Infrastructure includes, at a minimum, the structures, facilities, and equipment for, in the United States, 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. Infrastructure includes facilities that generate, transport, and distribute energy.

Moreover, according to the OMB guidance document:

> When determining if a program has infrastructure expenditures, Federal agencies should interpret the term "infrastructure" broadly and consider the definition provided above as illustrative and not exhaustive. When determining if a particular construction project of a type not listed in the definition above constitutes "infrastructure," agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. Projects consisting solely of the

[23] BIL, § 70917(c)(1).

purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project.

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

Project means the construction, alteration, maintenance, or repair of infrastructure in the United States.

B. Buy America Requirements for Infrastructure Projects ("Buy America" requirements)
In accordance with Section 70914 of the BIL, none of the project funds (includes federal share and recipient cost share) may be used for a project for infrastructure unless:

(1) all iron and steel used in the project 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 for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

(3) all construction materials[24] are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

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

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

These requirements must flow down to all sub-awards, all contracts, subcontracts and purchase orders for work performed under the proposed project, except where the Prime recipient is a for-profit entity. Based on guidance from the Office of Management and Budget (OMB), the Buy America requirements of the BIL do not apply to DOE projects in which the Prime recipient is a for-profit entity; the requirements only apply to projects whose Prime recipient is a State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization.

For additional information related to the application and implementation of these Buy America requirements, please see OMB Memorandum M-22-11, issued April 18, 2022: https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf

Note that for all applicants—both non-Federal entities and for-profit entities—DOE is including a Program Policy Factor that the Selection Official may consider in determining which Full Applications to select for award negotiations that considers whether the applicant has made a commitment to procure U.S. iron, steel, manufactured products, and construction materials in its project.

C. Waivers

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

In limited circumstances, DOE may waive the application of the Buy America requirements where DOE determines that:

(1) applying the Buy America requirements 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.

If an applicant or recipient is seeking a waiver of the Buy America requirements, it may submit a waiver request after it has been notified of its selection for award negotiations. A waiver request must include:

- A detailed justification for the use of "non-domestic" iron, steel, manufactured products, or construction materials to include an explanation as to how the non-domestic item(s) is essential to the project
- A certification that the applicant or recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers;
- Applicant/Recipient name and Unique Entity Identifier (UEI)
- Total estimated project cost, DOE and cost-share amounts
- Project description and location (to the extent known)
- List and description of iron or steel item(s), manufactured goods, and construction material(s) the applicant or recipient seeks to waive from Domestic Content Procurement Preference requirement, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each.
- Waiver justification including due diligence performed (e.g., market research, industry outreach) by the applicant or recipient
- Anticipated impact if no waiver is issued

DOE may require additional information before considering the 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 [DOE Buy America Requirement Waiver Requests | Department of Energy].

DOE's decision concerning a waiver request is not appealable.

APPENDIX D – LIST OF ACRONYMS

BIL	Bipartisan Infrastructure Law
CETs	Critical and Emerging Technologies
CEJST	Climate and Economic Justice Screening Tool
COI	Conflict of Interest
CRADA	Cooperative Research and Development Agreement
DEC	Determination of Exceptional Circumstances
DEIA	Diversity, Equity, Inclusion, and Accessibility
DMP	Data Management Plan
DOE	Department of Energy
DOI	Digital Object Identifier
DOL	Department of Labor
EERE	Energy Efficiency and Renewable Energy
FAR	Federal Acquisition Regulation
FCOI	Financial Conflicts of Interest
FFATA	Federal Funding and Transparency Act of 2006
FOA	Funding Opportunity Announcement
FOIA	Freedom of Information Act
FFRDC	Federally Funded Research and Development Center
GAAP	Generally Accepted Accounting Principles
HBCUs	Historically Black Colleges and Universities
IPMP	Intellectual Property Management Plan
IRB	Institutional Review Board
M&O	Management and Operating
MFA	Multi-Factor Authentication
MPIN	Marketing Partner ID Number
MSI	Minority-Serving institution
MYPP	Multi-Year Program Plan
NDA	Non-Disclosure Acknowledgement
NEPA	National Environmental Policy Act
NNSA	National Nuclear Security Administration
NSF	National Science Foundation
OFCCP	Office of Federal Contractor Compliance Programs
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSS	Open-Source Software
OSTI	Office of Scientific and Technical Information
OTA	Other Transactions Authority
PII	Personal Identifiable Information
RD&D	Research, Development, and Demonstration

RFI	Request for Information
RFP	Request for Proposal
SAM	System for Award Management
SCEP	Office of State and Community Energy Programs
SciENcv	Science Experts Network Curriculum Vita
SMART	Specific, Measurable, Achievable, Relevant, and Timely
SOPO	Statement of Project Objectives
SPOC	Single Point of Contact
STEM	Science, Technology, Engineering, and Mathematics
TAA	Technical Assistance Agreement
TIA	Technology Investment Agreement
TRL	Technology Readiness Level
UCC	Uniform Commercial Code
UEI	Unique Entity Identifier
WBS	Work Breakdown Structure
WP	Work Proposal