

# ADMINISTRATIVE AND LEGAL REQUIREMENTS DOCUMENT



## Department of Energy (DOE) Grid Deployment Office (GDO) National Energy Technology Laboratory (NETL)

### BIL – PREVENTING OUTAGES AND ENHANCING THE RESILIENCE OF THE ELECTRIC GRID

#### FORMULA GRANTS TO STATES AND INDIAN TRIBES

**Announcement Number: DE-FOA-0002736**

**Announcement Type: Amendment 000007**

**Assistance Listing Number: 81.254, Grid Infrastructure Deployment and Resilience**

The purpose of this Administrative and Legal Requirements Document (ALRD) is to provide guidance to States<sup>1</sup> and Indian Tribes<sup>2</sup> for preparation of Formula Grant applications submitted in response to Section 40101(d) of the Infrastructure Investment and Jobs Act (IIJA),<sup>3</sup> also known as the Bipartisan Infrastructure Law (BIL).

<b>Issue Date:</b>	<b>June 21, 2023</b>
<b>Due Date for Applications:</b>	<b>May 31, 2023 / 11:59 PM ET: STATES inclusive of U.S. TERRITORIES and the District of Columbia</b> <b>August 31, 2023 / 11:59 PM ET INDIAN TRIBES ONLY</b>

<sup>1</sup> The term “States” includes herein all 50 States, U.S. Territories, and the District of Columbia.

<sup>2</sup> Pursuant to BIL Section 40001(2), “[t]he term ‘Indian Tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). See also 42 U.S.C. 18701(2).

<sup>3</sup> Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58 (Nov. 15, 2021), Sec. 40101(d) (codified at 42 U.S.C. 18711(d)), available at <https://www.congress.gov/bill/117th-congress/house-bill/3684>. This FOA uses the more common name “Bipartisan Infrastructure Law”.

Modifications to the ALRD are as follows:

Mod. No.	Date	Description of Modification
000001	07/08/2022	<p>Activate all hyperlinks in the ALRD.</p> <p>Under Section IV, ALRD Response / Application Information, Paragraph A, the link to the FedConnect Ready, Set, Go guide was added to provide Applicants with additional details of how to submit their application.</p>
000002	09/01/2022	<p>Extend the Application Due Date from 09/30/2022 / 11:59 PM ET to 03/31/2023 / 11:59 PM ET.</p> <p>Changes are highlighted in green.</p>
000003		<p>Update the Assistance Listing Number to 81.254</p> <p>Update Restricted Eligibility language to include Alaska Native Regional Corporations (ANRCs).</p> <p>Update the Estimated Funding term and funding allocation table to include the ANRCs' allocation amounts.</p> <p>Revise Head of Government Letter or Tribal Council Resolution Term.</p> <p>Incorporate additional information related to cost match.</p> <p>Incorporate additional application files related to Cost Match, Cost Match Commitment Letters and Authorization from FFRDC/NL cognizant Contracting Officer.</p> <p>Update the following terms: Notice of Bipartisan Infrastructure Law-Specific Requirements, Requirements for DOE and non-DOE FFRDCs Included as a Subrecipient, UEI/SAM, Resilience Project and Subaward/Subcontract Notification, Personally Identifiable Information (PII).</p> <p>Incorporate the following BIL terms: Flood Resilience, Construction, and Equipment and Supplies.</p> <p>Incorporate Real Property Term.</p> <p>Changes above are highlighted in blue.</p> <p>This amendment also reorganizes some of the ALRD terms in the various sections.</p>

000004	12/8/2022	<p>Revise Year 1 Allocations as a result of the addition of Alaskan Native Village Corporations (ANVC).</p> <p>Incorporate Year 2 funding allocations.</p> <p>Update Restricted Eligibility language to include Alaska Native Village Corporations (ANVCs).</p> <p>Update the following terms: UEI/SAM, Affirmative Action and Pay Transparency Requirements; Foreign National Participation; Buy America Requirements for Infrastructure Projects; Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment; and Fraud, Waste and Abuse.</p> <p>Updated Appendix C, Required Use of American Iron, Steel, Manufactured Products, and Construction Materials.</p> <p>Updated footnote references.</p> <p>Changes above are highlighted in <b>fuchsia</b>.</p>
000005	03/02/2023	<p>Extend the Application Due Date from 03/31/2023 / 11:59 PM ET to 05/31/2023 / 11:59 PM ET.</p> <p>Revise Application Submission Requirements.</p> <p>Clarify cost match information in the application package.</p> <p>Update the following terms: Resilience Project and SubAward / SubContract Notification and Real Property.</p> <p>Revise Appendix A – Statement of Project Objectives.</p> <p>Changes are highlighted in <b>Red</b>.</p>
000006	05/05/2023	<p>Extend the Application Due Date for Indian Tribes only from 05/31/2023 / 11:59 PM ET to 08/31/2023 / 11:59 PM ET.</p> <p>Increase Year 1 and Year 2 allocations to certain Indian Tribes to better account for the probability of disruptive events on Tribal lands.</p> <p>Changes are highlighted in <b>Teal</b>.</p>
000007	06/21/2023	<p>The purpose of this amendment is for the following:</p> <ol style="list-style-type: none"> <li>1) Include Tribal Consortia as eligible applicants.</li> <li>2) Waive Matching Fund Requirements for Insular Areas.</li> </ol> <p>Changes are delineated in <b>Gray</b>. Please reference pages: 14, 15, 17, 18, 25, 26 and 27.</p>

## Registration Requirements

There are several one-time actions that must be completed before submitting an application in response to this Administrative and Legal Requirements Document (ALRD) (e.g., register with the System for Award Management (SAM), obtain a Unique Entity Identifier (UEI), and register with FedConnect.net). It is vital that applicants address these items as soon as possible, as some may take several weeks.

Pre-application actions:

- **SAM** - Applicants must register with the SAM at <https://www.sam.gov/> prior to submitting an application in response to this ALRD. Designating an Electronic Business Point of Contact (EBiz POC) and obtaining a special password called an MPIN are important steps in SAM registration. The applicant must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration. More information about SAM registration for applicants is available at: [https://www.fsd.gov/gsafsd\\_sp?id=gsafsd\\_kb\\_articles&sys\\_id=650d493e1bab7c105465eaccac4bcbcb](https://www.fsd.gov/gsafsd_sp?id=gsafsd_kb_articles&sys_id=650d493e1bab7c105465eaccac4bcbcb).

**NOTE: If clicking the SAM links do not work, please copy and paste the link into your browser.**

- **UEI** - Applicants must obtain an UEI from the SAM to uniquely identify the entity. The UEI is available in the SAM entity registration record.

**NOTE: Subawardees/subrecipients at all tiers must also obtain an UEI from the SAM and provide the UEI to the award Recipient before the subaward can be issued.**

**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](#).**

- **FedConnect.net** - Applicants must register with FedConnect to submit applications in response to the ALRD, to submit questions, and to receive the award. FedConnect website: [www.fedconnect.net/](http://www.fedconnect.net/). For more information regarding registration with FedConnect review the FedConnect Ready, Set, Go! Guide at

[https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect\\_Ready\\_Set\\_Go.pdf](https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf).

- **Electronic Signatures** - Acknowledgement of award documents by the Grantee's authorized representative through electronic systems used by the Department of Energy, including FedConnect, constitutes the Grantee's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Grantee's authorized representative constitutes the Grantee's electronic signature.

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# I. ALRD Description

## A. Authorizing Statutes

Section 40101(d) of the BIL established this Formula Grant Program (Program) and provides instruction and guidance to DOE on administration of the Program. All Grant awards made under this Program shall comply with applicable law, including regulations contained in [2 CFR Part 200](#) as amended by [2 CFR Part 910](#).

## B. Background and Description

The NETL is issuing, on behalf of the GDO, this Administrative and Legal requirements Document (ALRD). Awards made under this ALRD will be funded, in whole or in part, with funds appropriated by the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL)<sup>4</sup>.

The BIL is a once-in-a-generation investment in infrastructure, which will grow a more sustainable, resilient, and equitable economy through enhancing U.S. competitiveness, driving the creation of good-paying union jobs, and ensuring stronger access to economic, environmental and other benefits for disadvantaged communities<sup>5</sup>. The BIL appropriates more than \$62 billion to the DOE<sup>6</sup> to invest in American manufacturing and workers; expand access to energy efficiency; deliver reliable, clean and affordable power to more Americans; 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 address the climate crisis and support efforts to build a clean and equitable energy economy that achieves zero carbon electricity by 2035 and put the United States on a path to achieve net-zero emissions economy-wide by no later than 2050<sup>[3]</sup> to benefit all Americans.

The Program will provide approximately \$942.2 million for Year 1 and Year 2 and \$459 million annually over a period of three years to States and Indian Tribes (also termed herein as "eligible applicants") to improve the resilience of the electric grid against

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<sup>4</sup> This ALRD uses the more common name "Bipartisan Infrastructure Law".

<sup>5</sup> 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/>. 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>

<sup>6</sup> 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>



disruptive events<sup>7</sup>. Eligible applicants may further allocate funds to “eligible entities” as defined by this section and discussed below. This ALRD provides the requirements for applying to receive a grant under this Program, as well as for administering funds once received. Eligible applicants will be required to submit applications each year, although grants may cover multiple-year periods of performance.

***Program Purpose:***

This ALRD supports the Administration and Congressional goals to (1) demonstrate measurable improvements in energy resilience in the United States and mitigate climate-related risk, (2) invest in modernized grid infrastructure that can enable consumer access to lower-cost energy and accommodate increased electrification, increased penetrations of variable renewable electricity and distributed energy resources, and other evolving system needs over the coming decades, (3) invest in clean energy and decarbonization solutions to achieve a carbon-free power sector by 2035 and net-zero greenhouse gas emissions economy-wide by 2050, and (4) create good-paying jobs with the free and fair choice to join a union. Multiple pathways exist for the United States to meet its infrastructure resilience and clean energy goals, but all require upgrading and expanding the Nation’s transmission and distribution systems; significant investment in cost-effective new generation resources and energy storage; and efficiency, decarbonization, and demand flexibility investments in buildings, industry, and transportation. Resilience improvements may include upgrades of individual hardware components, software components, or both, as well as enhancements in operations or new configurations of the grid. Principles of equity and justice will guide implementation of this program, in alignment with the Administration’s Justice40 Initiative<sup>8</sup>. The DOE commits to robust engagement and collaboration with States and other interested parties, including industry, unions, and local communities, as well as consultation with Indian Tribes for successful implementation of this Program.

As part of the whole-of-government approach to advance equity and encourage worker organizing and collective bargaining<sup>9,10,11</sup> and in alignment with BIL section 40101(d), this ALRD and any related activities will seek to encourage meaningful engagement and participation of labor unions and underserved communities and underrepresented groups, including consultation with Tribal Nations<sup>12,13</sup>. Consistent with Executive Order

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<sup>7</sup> The term “disruptive event” means “an event in which operations of the electric grid are disrupted, preventively shut off, or cannot operate safely due to extreme weather, wildfire, or a natural disaster.” 42 U.S.C. 18711(a)(1).

<sup>8</sup> Justice40 Initiative outlined in Executive Order 14008, Tackling the Climate Crisis at Home and Abroad.

<sup>9</sup> [EO 13985](#), “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021).

<sup>10</sup> [EO 14025](#), “Worker Organizing and Empowerment” (April 26, 2021).

<sup>11</sup> [EO 14052](#), “Implementation of the Infrastructure Investment and Jobs Act” (Nov. 18, 2021).

<sup>12</sup> [EO 13175](#), “Consultation and Coordination With Indian Tribal Governments” (Nov. 6, 2000), 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.

<sup>13</sup> [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#), (January 26, 2021)

14008,<sup>14</sup> this ALRD is designed to support the goal that 40% of the overall benefits of certain federal investments flow to disadvantaged communities in accordance with the Justice40 Initiative, and drive the creation of good-paying union jobs through a focus on high labor standards and the free and fair chance for workers to join a union.

Under the Program, the DOE will provide grants to eligible applicants to improve the resilience of their electric grids. These grants offer a unique opportunity to advance the capabilities of States and Indian Tribes to address current and future resilience needs. DOE is encouraging eligible applicants to undertake an objectives-led planning process to formulate strategies that address resilience and lead to needed improvements in infrastructure, including necessary and supporting grid modernization investments in underserved communities, in line with the Administration's Justice40 Initiative<sup>15</sup>. This will also involve a coordinated effort by eligible applicants to include stakeholders in their processes for formulating objectives that can guide investment strategies for improving resilience. It is expected that a diverse set of populations, including underserved and disadvantaged communities, will participate in these efforts and will be provided equitable opportunities and the benefits that derive from them. In addition, DOE is committed to providing technical assistance, where appropriate, to support these efforts, including guidance on planning practices related to resilience, energy justice (equity), workforce development and quality job creation, grid modernization, and the integration and utilization of renewable and distributed energy resources (DERs).<sup>16</sup>

### **C. Objectives and Scope**

The objective of this Program is to improve the resilience of the electric grid against disruptive events. Per BIL section 40101(a)(1),<sup>17</sup> a disruptive event is "an event in which operations of the electric grid are disrupted, preventively shut off, or cannot operate safely due to extreme weather, wildfire, or a natural disaster." To achieve this objective, funding provided by DOE under this Program may be used to implement a wide range of resilience measures intended to mitigate the impact of disruptive events, including:<sup>18</sup>

- a) weatherization technologies and equipment;
- b) fire-resistant technologies and fire prevention systems;
- c) monitoring and control technologies;

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<sup>14</sup> EO 14008, "Tackling the Climate Crisis at Home and Abroad," January 27, 2021.

<sup>15</sup> Justice40 Initiative outlined in Executive Order 14008, Tackling the Climate Crisis at Home and Abroad.

<sup>16</sup> DERs are resources sited close to customers that can provide all or some of their electric power needs or can be used by the system to either reduce demand (such as energy efficiency) or provide supply to satisfy the energy, capacity, or ancillary service needs of the grid. The resources are small in scale, connected to the distribution system, and close to load. Examples of different DER types include solar photovoltaic (PV), wind, combined heat and power (CHP), energy storage, demand response (DR), grid-interactive buildings and other flexible loads, electric vehicles (EVs), microgrids, and energy efficiency (EE).

<sup>17</sup> 42 U.S.C. 18711(a)(1).

<sup>18</sup> 42 U.S.C. 18711(e)(1).

- d) the undergrounding of electrical equipment;
- e) utility pole management;
- f) the relocation of power lines or the reconductoring of power lines with low-sag, advanced conductors;
- g) vegetation and fuel-load management;
- h) the use or construction of distributed energy resources for enhancing system adaptive capacity during disruptive events, including:
  - a. microgrids; and
  - b. battery-storage subcomponents;
- i) adaptive protection technologies;
- j) advanced modeling technologies;
- k) hardening of power lines, facilities, substations, of other systems; and
- l) the replacement of old overhead conductors and underground cables.

Funding may also be used for the training, recruitment, retention, and reskilling of skilled and properly credentialed workers in order to perform the work required for the particular resilience measures listed above and described by the State or Indian Tribe in their Program Narrative, as described in more detail in ALRD Section IV.B.ii.4.

A subaward to an eligible entity under this grant program may not be used for:

1. Construction of a new -
  - a) electric generating facility; or
  - b) large-scale battery-storage facility that is not used for enhancing system adaptive capacity during disruptive events; or
2. Cybersecurity.

For the purpose of implementing eligible resilience measures that achieve the objectives of Section 40101(d), States and Indian Tribes may use grant funding to issue subawards to eligible entities. Eligible entities include:

- a) an electric grid operator;
- b) an electricity storage operator;
- c) an electricity generator;
- d) a transmission owner or operator;
- e) a distribution provider;
- f) a fuel supplier; and
- g) any other relevant entity, as determined by the Secretary (of DOE).

The efforts undertaken by States and Indian Tribes under Section 40101(d) will impact strategies for grid resilience, reliability, and modernization investments pursued through federal assistance associated with the remainder of BIL Section 40101, as well as Sections 40103 and 40107. Through this Program, DOE intends to have States and Indian Tribes develop and apply objectives and performance metrics based on their particular needs

and policies for reliability, resilience, good-paying jobs with the free and fair choice to join a union, and equity that are additional to DOE reporting requirements. DOE believes that setting such objectives will most effectively guide the formulation of holistic strategies for determining near-term and longer-term grid investments.

In addition, the efforts undertaken under the Program should have alignment with the State Energy Security Plans developed by States<sup>19</sup> per Section 40108 of the BIL for an all-hazards approach to grid resilience. While grant monies under this section cannot fund new cybersecurity investments, the resilience investments under the Program should be in alignment with cybersecurity standards and best practices, including the North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) standards and National Institute of Standards and Technology (NIST) Cybersecurity Framework.

#### **D. 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 infrastructure 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 ALRD. Recipients must flow down the requirements to subrecipients to ensure the subrecipient's compliance with the requirements.

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<sup>19</sup> Only States are required to produce State Energy Security Plans although Indian Tribes may participate.

## II. Award Information

### A. Type of Application

DOE will accept only new applications under this announcement.

### B. Type of Award Instrument

DOE will award formula grants under this announcement.

### C. Award Overview

#### i. Estimated Funding

Approximately \$477 million in Year 1 funding and \$465.2 million in Year 2 funding is expected to be available for new awards under this announcement. Funds will be distributed on formula basis in accordance with the formula allocations posted at [Section 40101\(d\) Formula Grants to States & Indian Tribes | netl.doe.gov](#).

DOE expects to provide approximately \$459 million per year for the remaining 3 years (FY24-FY26) under these awards.

#### ii. Estimated Period of Performance

DOE anticipates making awards initially with an estimated period of performance of 5 years. Awards may be extended to span the amount of time necessary for Recipients to complete all subaward project efforts, up to 10 years.

### III. Eligibility Information

#### A. Eligible Applicants

##### i. Restricted Eligibility

In accordance with [2 CFR 910.126](#), Competition, and Section 40101(d) of the BIL, eligibility for awards under this formula grant program is restricted to “States” and Indian Tribes. “States” is defined as including U.S. States, U.S. Territories (Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, and Northern Mariana Islands) and the District of Columbia.

Pursuant to Section 40001(2) of the BIL, “[t]he term ‘Indian Tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (ISDA) (25 U.S.C. 5304)<sup>20</sup>.” See 42 U.S.C. 18701(2). Federally Recognized Alaska Native Regional Corporations and Alaskan Native Village Corporations qualify as Indian Tribes as defined by BIL Section 40001 (42 U.S.C. 18701(2)) with Section 4 of the ISDA (25 U.S.C. 5304). All Federally Recognized Indian Tribes, Alaska Native Regional Corporations, and Alaskan Native Village Corporations are eligible for Section 40101(d) grants.

For purposes of the Sec. 40101(d) Program, a “Tribal Consortium” is two or more Indian Tribes (as defined in Section 40001(2)), that have designated a single Indian Tribe to act on their behalf as lead Indian Tribe of the Tribal Consortium. Indian Tribes that are eligible to participate in the Sec. 40101(d) Program may form a “Tribal Consortium.”.

##### ii. Eligible Entities for Subawards

States and Indian Tribes may make subawards to the following eligible entities for resilience projects that implement resilience measures as defined in BIL Section 40101(a)(2):

- an electric grid operator;
- an electricity storage operator;
- an electricity generator;
- a transmission owner or operator;
- a distribution provider;
- a fuel supplier; and

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<sup>20</sup> “ ‘Indian tribe’ or ‘Indian Tribe’ means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians[.]” 25 U.S.C. §5304.

- any other relevant entity, as determined by the Secretary (of DOE).

## **B. Cost Matching 40101(d)(8)**

### **1. Cost Match Requirements**

Each State and Indian Tribe is required to match 15 percent of the amount of each grant provided to the State or Indian Tribe under the Program. However, based on the Office of Management and Budget (OMB) issued Controller Alert CA-23-04, Waiving Matching Fund Requirements for Insular Areas, and the subsequent U.S. DOE cost match waiver, the U.S. Insular Areas (U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) are not required to provide the 15 percent cost match.

Further, an eligible entity that receives a subaward under this program is required to match 100 percent of the amount of the subaward as required by Section 40101(h)(1). However, if the eligible entity sells not more than 4,000,000 megawatt hours of electricity per year, the required match will be one-third of the amount of the subaward as required by Section 40101(h)(2).

If a State or Tribe petitions the Secretary to be designated as an eligible entity for the purpose of executing a resilience project, it must provide both the 15% cost match for the entire allocation made by DOE to the State or Tribe (see section 40101(d)(8)) and the project specific cost match requirement of 100% or 1/3 (see section 40101(h)).

“Cost matching” for the non-federal share is calculated as a percentage of the Federal funds only, rather than the Total Project Cost.

Examples of Cost Matching are:

- If DOE funds \$10,000,000 to a State or Indian Tribe, the State or Indian Tribe would be required to “match” (with 15%) an amount of (at least) \$1,500,000. In this case, the total award value would be \$11,500,000
- If a State or Indian Tribe funds \$2,000,000 to an eligible entity that sells more than 4,000,000 megawatt hours of electricity per year via a subaward, the entity would be required to “match” (with 100%) an amount of (at least) \$2,000,000. In this case, the total subaward value would be \$4,000,000
- If a State or Indian Tribe funds \$1,500,000 to an eligible entity that sells not more than 4,000,000 megawatt hours of electricity per year via a subaward, the entity would be required to “match” (with one-third) an amount of (at least) \$500,000. In this case, the total subaward value would be \$2,000,000.

Additionally, any cost matching that is used to meet a subaward cost matching requirement may not be used by a State or Indian Tribe as part of the 15% cost match<sup>21</sup>.

## 2. Legal Responsibility

Applicants will be bound by the cost match proposed in their application and incorporated into their award.

The cost match 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 match. The Prime Recipient's cost match obligation is expressed in the Assistance Agreement as a static amount in U.S. dollars (cost match amount) and as a percentage of the Total Project Cost (cost match percentage). 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 match percentage of total expenditures incurred through the date of termination.

The Prime Recipient is solely responsible for managing cost match contributions by the Project Team and enforcing cost match obligation assumed by the Project Team members in subawards or related agreements.

## 3. Cost Match Types and Allowability

Every cost match contribution must be allowable under the applicable Federal cost principles, as described in Section IV Funding Restrictions. In addition, cost match must be verifiable upon submission of the Full Application.

Project Teams may provide cost match in the form of cash or in-kind contributions. Cost match may be provided by the Prime Recipient, Subrecipients, or third parties (entities that do not have a role in performing the scope of work). 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.

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<sup>21</sup> See examples and scenarios for cost match in the [Frequently Asked Questions](#)



Project teams may use funding or property received from state or local governments to meet the cost match requirement, so long as the funding was not provided to the state or local government by the Federal Government, unless otherwise authorized by law.

The Prime Recipient may not use the following sources to meet its cost match 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 match requirements for more than one project or program.

Cost match contributions must be verifiable from the Prime Recipient's records, and necessary and reasonable for proper and efficient accomplishment of the project. As all sources of cost match 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.

Applicants are encourage to refer to 2 CFR 200.306 as amended by 2 CFR 910.130 for additional cost matching requirements.

### **c. Head of Government Letter or Tribal Council Resolution**

Applicants shall provide a "Head of Government Letter", "Tribal Council Resolution" or other instrument of appointment by the Indian Tribe's legally authorized entity and consistent with the Indian Tribe's customs, documenting their appointment as the sole entity within the State or Indian Tribe to apply for, receive, and administer the award as authorized by BIL section 40101(d) and as described in this ALRD.

For Tribal Consortium applications ONLY. The consortium application package must include the following:

- "Tribal Council Resolution" or "Head of Government Letter" from each participating Indian Tribe designating the lead Indian Tribe to act on its behalf as lead Indian Tribe of the Tribal Consortium and receive their allocations;
- "Tribal Council Resolution" or "Head of Government Letter" accepting the

designation as the lead Indian Tribe for the Tribal Consortium. The letter should state that the lead Indian Tribe will apply for grant funding and administer the grant on behalf of all participating consortium Indian Tribes.

## D. Other Eligibility Requirements

## E. Federally Funded Research and Development Centers and National Laboratories.

DOE/National Nuclear Security Administration (NNSA) Federally Funded Research and Development Centers (FFRDCs) and National Laboratories (NL) and non-DOE/NNSA FFRDCs and NLs may be proposed as a Subrecipient for technical assistance and administrative activities only.

**NETL is not eligible as a sub-recipient under this announcement.**

Unless instructed otherwise by the DOE CO for the DOE award, all FFRDCs are required to enter into a Cooperative Research and Development Agreement<sup>22</sup> (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.

Requirements for DOE/NNSA and non-DOE/NNSA FFRDCs proposed as a subrecipient for technical assistance and administrative activities only are 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 for the FFRDC must authorize in writing the use of the FFRDC on the proposed project and this authorization must be

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<sup>22</sup> 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>

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. Value/Funding*

The value of and funding for the FFRDC portion of the work will be included in the award to the applicant.

*d. Cost Match*

The applicant's cost match requirement will be calculated as a percentage of the Federal funds only, rather than the Total Project Cost.

*e. 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.

*f. Limit on FFRDC Effort*

The scope of work to be performed by the FFRDC must support technical assistance and administrative activities and must comply with the 5 percent limitation set forth in Section 40101(d)(7), which limits the State or Indian to utilize up to 5 percent of Federal grant funds for project administration and technical assistance.

## IV. ALRD Response/Application Information

### A. Application Submission Information

Applications must be received no later than the time/dates provided on the cover page of this ALRD. Applications are to be submitted via FedConnect. Although, DOE strongly encourages applications to be submitted electronically, for Applicants with insufficient Internet access or connectivity, paper applications may be submitted to the address below.

For electronic application submission, please reference the FedConnect Ready, Set, Go Guide at:

[https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect\\_Ready\\_Set\\_Go.pdf](https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf) for information of how to submit your application through FedConnect. DOE reserves the right to request additional or clarifying information for any reason deemed necessary. Applications will be reviewed for consistency with requirements of this ALRD.

For paper copy application submissions, Applicants may submit one copy of their application by mail to the following address:

FOA GD00002736  
Energy Delivery & Security Directorate  
National Energy Technology Laboratory  
Building 39-214A, MS: P02A  
3610 Collins Ferry Road  
Morgantown, WV 26505

**Applications must be postmarked by August 31, 2023 for Indian Tribes.**

**NOTE: Submittal of a paper copy application does not alleviate the Applicant's responsibility to obtain a Unique Entity Identifier (UEI), have an active SAM registration, and register in FedConnect. These registration requirements must be completed prior to DOE issuing an award.**

***Important Information Regarding the Grant Application:*** Applicants should NOT provide resilience project subaward information in the initial application to DOE. After the issuance of the grant to the State or Indian Tribe, the State or Indian Tribe may, at any time, provide the budget and other information to request DOE approval for specific resilience project subawards in support of the overarching resilience investment strategies described in the Program Narrative. The process for requesting specific resilience project approval, after the issuance of the grant to the

State or Indian Tribe, is outlined in the Statement of Project Objectives and the Resilience Project and Subaward/Subcontract Notification Requirement in the ALRD.

## B. Applications

### i. Application Package

Application forms and instructions are available on the Grant Application Forms and Templates page of the BIL website at [Section 40101\(d\) Formula Grants to States & Indian Tribes | netl.doe.gov](https://www.netl.doe.gov/Section-40101(d)-Formula-Grants-to-States-&-Indian-Tribes).

### ii. Content and Form of Full Application

Applications must conform to the following requirements.

Submission	Components	Format	File Name
Full Application (PDF, unless stated otherwise)	SF-424	Form	Applicant Name SF424.pdf
	Program Narrative	Word or PDF	Applicant Name Program Narrative.doc or .pdf
	Environmental Questionnaire	PDF	Applicant Name Env.pdf
	SF-LLL Disclosure of Lobbying Activities	Form	Applicant Name SF-LLL.pdf
	Head of Government Letter or Tribal Council Resolution	PDF	Applicant Name Head of Government.pdf or Applicant Name Tribal Council Resolution.pdf
	Pre-Award Information Sheet	Word	Applicant Name Pre-Award Info.doc
	Cost Match Information	PDF	Applicant Name Cost Match Info.pdf
	Cost Match Commitment Letters, if applicable	PDF	CMCL.pdf
	Authorization from cognizant Contracting Officer for DOE/NNSA FFRDC/NL or non-DOE FFRDC/NL, if applicable	PDF	Use up to 10 letters of the FFRDC/NL name plus FFRDC as the file name (e.g.; anIFFRDC.pdf or lincolnFFRDC.pdf)

Detailed guidance on the content and form of each component is listed below.

#### 1. SF-424: Application for Federal Assistance

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 <https://www.energy.gov/management/financial-assistance-forms-and-information-applicants-and-recipients>, under Certifications and Assurances. Save the information in a single file named (APPLICANT NAME SF424.xls or xlsx).

## 2. Program Narrative

The Program Narrative shall address the following:

1. Objectives and Metrics: List 3-5 objectives that the applicant intends to apply for guiding their resilience investment decisions. The intent of this section of the Program Narrative is to ultimately develop a planning framework for resilience to address all-hazards including future climate implications. The first year, DOE is seeking input on criteria for determining investment decisions. At a minimum, the objectives and metrics should address:
  - a. Resilience and energy justice concerns, including reducing the frequency and duration of outages in disadvantaged communities.
  - b. How the project will use strong labor standards and protections (including for direct employees, contractors, and sub-contractors), such as through the use of project labor agreements, local hire agreements, and outline of a plan to attract, train, and retain an appropriately skilled workforce (i.e., through registered apprenticeships and other joint labor-management training programs that serve all workers, particularly those underrepresented or historically excluded); plans to partner with a training provider (labor, community college, etc.); and the use of an appropriately credentialed workforce (i.e., requirements for appropriate and relevant professional training, certification, and licensure).

Provide the metrics that will accompany the objectives to measure outcomes associated with improving resilience, creating good-paying jobs with the free and fair choice to join a union, and advancing energy justice.

Indicate whether the objectives and metrics are provisional pending further discussion and consideration by the State or Indian Tribe with its stakeholders. DOE expects that recipients will establish a formal set of objectives and metrics in order to receive Year 2 formula funding. Examples of objectives and metrics, in addition to reporting on any DOE required metrics, and approaches for establishing them are available at: [Section 40101\(d\) Formula Grants to States & Indian Tribes | netl.doe.gov](#).

2. Criteria: Describe the criteria used for selecting and determining the awards to eligible entities. At a minimum, the criteria should address specific requirements set forth in Section 40101(d), which include that:

- a. Priority should be given to projects that will generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events;
  - b. The percentage of awards made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year should not be less than the percentage of all customers in the State or Indian Tribe that are served by those eligible entities; and
  - c. Awards should be provided to eligible entities for projects within the State or on the land of the Indian Tribe.
3. **Methods:** Provide a description of the methods the applicant anticipates using for soliciting, awarding, and distributing funds. These might include several options, including the use of competitive solicitations, direct awards, and the use of financial instruments, such as Green Banks, to leverage the funds through 40101(d).

Provide also a description of the methods the applicant anticipates using to track and make public the metrics achieved by awardee uses of program funds to improve resilience by reducing the likelihood and consequences of disruptive events, to generate quality jobs, and to improve equity and community benefits.

4. **Funding Distribution:** Provide a description of the proposed funding distributions and categories of recipients of the subgrants to be provided to eligible entities. Also, indicate preferences for eligible entities if they do not explicitly appear on the list of eligible entities provided in Section 40101.
5. **Equity Approach:** To achieve the greatest impact for all Americans with this once-in-a-generation investment in infrastructure, it is critical that the BIL-funded projects not only contribute to the country's energy technology and climate goals, but also (1) support the BIL objectives to invest in America's workforce by including specific elements to accelerate job growth and job quality, including approaches to give workers a free and fair choice to join or form a union; and (2) advance DOE's equity, environmental and energy justice priorities, including DOE's commitment to the Justice40 Initiative<sup>23</sup>. Accordingly, the

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<sup>23</sup> The Justice40 initiative, created by E.O. 14008, establishes a goal that 40% of the overall benefits of certain federal investments flow to disadvantaged communities. <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>

Program Narrative must describe how the State or Indian Tribe will ensure their proposed project will incorporate:

- a. Quality Jobs: Strengthening prosperity by expanding good-paying, safe jobs accessible to all workers and supporting job growth through investments in domestic supply chains is a key goal set by President Biden, discussed in depth in his Executive Orders on Ensuring the Future Is Made in All of America by All of America's Workers (EO 14005), Tackling the Climate Crisis at Home and Abroad (EO 14008), Worker Organizing and Empowerment (EO 14025), Boosting Quality of Federal Construction Contracts (EO 14063), Promoting Competition in the American Economy (EO 14036), and Implementing the Infrastructure Investment and Jobs Act (EO 14052). Accordingly, this section of the Program Narrative should address efforts to achieve these goals, including:
  - i. efforts to attract, train, and retain a skilled workforce; and
  - ii. workforce opportunities in communities that have lost jobs due to the displacements of fossil energy jobs.
- b. Community Benefits: Section 40101(d)(5) requires a State or Indian Tribe to give priority to projects that would generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events. The Program Narrative should include an explanation of how the State or Indian Tribe will make such a determination for the projects that will be receiving funding and should include information on how the projects go beyond measures that are already being undertaken through current resilience planning by the State or Indian Tribe.
- c. Diversity, Equity, Inclusion and Accessibility (DEIA): DOE strongly encourages efforts to reach historically underserved populations, racial minorities, and women. These strategies should create the connectivity and conditions for growth where they may not exist, such as in rural and underserved communities. The Program Narrative should articulate the strategy the State or Indian Tribe will use for sharing and maximizing the project's benefits across disadvantaged communities and include a discussion of how resident, worker, and community leadership will be engaged throughout the project's duration.



Provide an explanation of how the State or Indian Tribe will make such a determination for the projects that will be receiving funding and should include information on how the projects go beyond measures that are already being undertaken through current resilience planning by the State or Indian Tribe.

6. Technical Assistance and Administration: Provide a description of how the State or Indian Tribe intends to utilize up to 5 percent of Federal grant funds for project administration and technical assistance.
7. Public Notice and Hearing: Section 40101(d)(2)(B)(ii) requires that eligible applicants give notice and undertake a public hearing to review the criteria and methods they anticipate using to grant awards to eligible entities and the proposed funding distributions and recipients of the grant awards to eligible entities. The applicant should use the public hearing to share the approach envisioned for setting objectives and metrics and the proposed funding distributions and recipients of the grant awards to eligible entities. Provide a brief description of the notice and public hearing process, including the number and types of organizations that attended. Also, report on the outcome of the public hearing such as approaches for engaging stakeholders for establishing formal objectives and metrics and for implementing strategic planning processes. Provide a copy of the notice as an attachment to the Program Narrative.
8. For Tribal Consortium Applications ONLY. Address how resilience objectives will benefit all participating Consortium Tribes and how Consortium Tribes will participate in decisions regarding use of grant funds.

DOE anticipates that the Program Narrative will be between 5 and 15 pages, depending upon the grant amount and complexity of resilience activities. DOE may reject applications and require revisions, if it determines that the program narrative lacks sufficient detail or does not comply with stated requirements. Save the information in a single file named (APPLICANT NAME PROGRAM NARRATIVE.pdf).

### **3. Environmental Questionnaire**

For the initial application, Applicants will be required to submit an environmental questionnaire(s) (NETL Form 451.1-1/3) for the proposed primary work location(s) for their administrative and technical assistance activities. Save the questionnaire in a single file named "APPLICANT NAME ENV.pdf" (or "APPLICANT NAME ENV-FILL IN TEAM MEMBER.pdf" if more than one questionnaire is submitted).

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

Prime 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.

Prime recipients and subrecipients are required to complete and submit SF-LLL, "Disclosure of Lobbying Activities" 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.

#### 5. Head of Government Letter or Tribal Council Resolution

Applicants shall provide a "Head of Government Letter", "Tribal Council Resolution" or other instrument of appointment by the Indian Tribe's legally authorized entity and consistent with the Indian Tribe's customs, documenting their appointment as the sole entity within the State or Indian Tribe to apply for, receive, and administer the award as authorized by BIL section 40101(d). Save this information as (APPLICANT NAME HEAD OF GOVERNMENT.pdf or APPLICANT NAME TRIBAL COUNCIL RESOLUTION.pdf).

For Tribal Consortium applications ONLY. The consortium application package must include the following:

- "Tribal Council Resolution" or "Head of Government Letter" from each participating Indian Tribe designating the lead Indian Tribe to act on its behalf as lead Indian Tribe of the Tribal Consortium and receive their allocations;
- "Tribal Council Resolution" or "Head of Government Letter" accepting the designation as the lead Indian Tribe for the Tribal Consortium. The letter should state that the lead Indian Tribe will apply for grant funding and administer the grant on behalf of all participating consortium Indian Tribes.

#### 6. Pre-Award Information Sheet

Applicants are required to complete the Pre-Award Information Sheet and submit it with their application. Save this information as (APPLICANT NAME PRE-AWARD INFO.pdf).

#### 7. Cost Match Information

Applicants shall provide the following information in support of their required 15% cost match:

- Cost Match Value
- Identify the source/organization of the proposed cost match.
- Type of Cost Match (cash or in-kind)
- Provide a description of their proposed cost match.

Save this information in a single file named APPLICANT NAME COST MATCH INFO.pdf).

#### **8. Cost Match Commitment Letters (if applicable)**

A Cost match commitment letter is required from any party (other than the organization submitting the application) proposing to provide all or part of the Applicant's required cost match, including a letter from any Indian Tribe participating in a consortium. The letter should state the party is committed to providing a specific minimum dollar amount of cost match, identify the type of proposed cost match (e.g., cash, services, and/or property) to be contributed, and be signed by the person authorized to commit the expenditure of funds by the entity. The applicant should submit the letter(s) in PDF format. Save this information in a single file named "CMCL.pdf"

#### **9. Authorization for DOE/NNSA FFRDC/NLs or non-DOE/NNSA FFRDCs/NLs (if applicable)**

The cognizant contracting officer for the DOE/NNSA FFRDC/NL or the non-DOE/NNSA Federal agency sponsoring the FFRDC must authorize in writing the use of the FFRDC on the proposed project, and this authorization, as specified in Section III of the FOA, must be submitted with the application. The use of a FFRDC must be consistent with the contractor's authority under its award. Save this information in a file using up to 10 letters of the FFRDC name plus FFRDC as the file name (e.g., lanlFFRDC.pdf or lincolnFFRDC.pdf).

### **c. 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](#).**

## **D. Intergovernmental Review**

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

## **E. Funding Restrictions**

Funding for all awards are contingent upon the availability of funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority.

All expenditures must be allowable, allocable, and reasonable in accordance with the applicable federal cost principles.

Refer to the following applicable federal cost principles for more information:

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

Costs to support or oppose union organizing, whether directly or as an offset for other funds, are unallowable.

## **F. Pre-Award Costs**

Applicants who receive a grant award under this ALRD may charge pre-award costs as herein prescribed. Pre-award costs are those costs incurred prior to the effective date of the Federal grant award. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal grant award, and if they are consistent with the applicable Federal cost principles referenced in 2 CFR part 200 as amended by 2 CFR part 910.

*Only pre-award costs that are directly pursuant to, in anticipation of, and necessary for the technical assistance and administrative expenses referenced in BIL Section 40101(d)(7) will be allowable under Federal grant awards made pursuant to this ALRD. Pre-award costs for technical assistance and administrative expenses incurred prior to May 3, 2022, the issuance date of this ALRD's Notice of Intent/Draft*

ALRD, will not be allowed. The total allowable amount of such pre-award costs is limited to:

- No more than 5% of the Federal allocation amount; and
- The required 15% cost match of the total Federal allocation amount.

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

## **G. 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 are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.

(2) Recipients 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 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 compliance evaluations. OFCCP's Technical Assistance Guide<sup>24</sup> should be consulted to gain an understanding of the requirements and possible required actions.

## **H. Prohibition Related to Foreign Government-Sponsored Talent Recruitment Programs**

### ***Prohibition***

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<sup>24</sup> 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>

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 ALRD. Should an award result from this ALRD, the recipient must exercise continuing 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 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.

### ***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 U.S. 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.

## V. Award Administration Information

### A. Notice of Award

An Assistance Agreement issued by the Contracting Officer is the authorizing award document. It normally includes either as an attachment or by reference: (1) Special Terms and Conditions; (2) Applicable program regulations, if any; (3) Application, which includes the project description and budget, as approved by DOE; (4) 2 CFR part 200 as amended by 2 CFR part 910; (5) National Policy Assurances To Be Incorporated As Award Terms; (6) Budget Summary; (7) Federal Assistance Reporting Checklist and Instructions, which identifies the reporting requirements; (8) Intellectual Property; (9) Federal-wide Research Terms and Conditions; (10) Agency Specific Requirements; and (11) any award specific terms and conditions.

### B. Administrative and National Policy Requirements

#### iii. 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.

***Intellectual Property Provisions.*** The standard DOE financial assistance intellectual property provisions applicable to the various types of recipients are located at:

<https://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>.

#### iv. 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, will 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.

Approval for foreign nationals from countries identified on the U.S. Department of State’s list of State Sponsors of Terrorism must be obtained from DOE before they can participate in the performance of any work under an award.

## **v. 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.

## **vi. 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>.

## **vii. Environmental Review in Accordance with National Environmental Policy Act (NEPA)**

DOE's decision whether and how to distribute federal funds under this ALRD is subject to the National Environmental Policy Act (42 USC 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 <http://nepa.energy.gov/>.

All recipients (and sub-recipients) will be required to submit an environmental questionnaire (NETL Form 451.1-1/3) for each work location proposed in the application. A NEPA representative will review these documents and any other pertinent information to determine the likely level of NEPA documentation required for qualified projects. Computer modeling, data analysis and classroom training are examples of actions typically covered by NEPA categorical exclusions (CX's). If any projects are likely to require an environmental assessment (EA) or environmental impact statement (EIS), the NEPA representative will provide further documentation.

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 costs to prepare the necessary records may be included as part of the project costs.



### **viii. 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 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>.

### **C. Eligible Entity Prioritization – 40101(d)(5)**

In making grants to eligible entities using funds made available to the applicable State or Indian Tribe under the program, the State or Indian Tribe shall give priority to projects that, in the determination of the State or Indian Tribe, will generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events.

### **D. Small Utilities Set Aside – 40101(d)(6)**

A State or Indian Tribe receiving a grant under the program shall ensure that, of the amounts made available to eligible entities, the percentage made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year is not less than the percentage of all customers in the State or Indian Tribe that are served by those eligible entities.

### **E. Technical Assistance and Administrative Expenses – 40101(d)(7)**

Of the amounts made available to a State or Indian Tribe under the program each fiscal year, the State or Indian Tribe may use not more than 5 percent for—  
(A) providing technical assistance under Section 40101(g)(1)(A); and  
(B) administrative expenses associated with the program.

## F. Government Generated Statement of Project Objectives

DOE has generated a Statement of Project Objectives (SOPO) to be used on all awards. Applicants should review the SOPO to be aware of project requirements. The SOPO is located in Appendix A of this ALRD.

## G. Resilience Project and Subaward/Subcontract Notification

**For all resilience project subawards** and any other subaward over \$250,000, the Recipient must notify the DOE Contracting Officer and Project Officer in writing prior to the execution of new or modified subawards/subcontracts. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR 200, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

The Recipient is responsible for making a final determination to award or modify subawards/subcontracts under this agreement, but the Recipient may not proceed with the subaward/subcontract until the DOE determines, and provides the Recipient written notification, that the information provided is adequate.

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

- (a) Recipient confirms that the subawardee:
  - (i) is an eligible entity type identified in BIL section 40101(a)(2);
  - (ii) is not a debarred or a suspended entity; and
  - (iii) will pay all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 on projects funded directly by or assisted in whole or in part by and through funding under the award, wages at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 1 of Title 40, United State Code commonly referred to as the “Davis-Bacon Act” (DBA).
  
- (b) Recipient confirms that:
  - (i) the process undertaken to solicit the subaward/subcontract complies with their written procurement procedures as outlined in 2 CFR 200.318;
  - (ii) the proposed work to be done is an eligible activity identified in BIL Section 40101(e)(1);
  - (iii) the proposed subaward effort is consistent with the Program Narrative **being executed under the award**;
  - (iv) the primary purpose of the proposed project is not cyber security but that the implementation of the proposed project will adhere to any applicable cybersecurity requirements, and where possible, best practices in deploying technologies under their subaward;

- (v) no planned, actual or apparent conflict of interest exists between the Recipient and the selected subawardee/subcontractor and that the Recipient's written standards of conduct were followed;
- (vi) as applicable, subaward/subcontracts address the Small Utilities Set Aside requirement set forth in BIL Section 40101(d)(6); and
- (vii) all required award provisions will be flowed down in the resulting subaward/subcontract.

(c) Recipient provides:

- (i) SF-424A Budget Information form and Budget Justification form for all resilience project subawards; and any other subaward over \$250,000;
- (ii) a completed Environmental Questionnaire covering the subaward activity;
- (iii) cost match commitment letter from the eligible entity committing to meet the cost matching as required in BIL Section 40101(h);
- (iv) the proposed metrics that will be collected and reported in the Quarterly Progress Report to measure and demonstrate the beneficial impact of the resilience project on the resilience of the grid and to the community served;
- (v) Performance of Work in the United States waiver (if applicable);
- (vi) Buy America for Infrastructure Projects waiver (if applicable); and
- (vii) a summary/brief description of any application, similar in nature, submitted by the proposed subawardee to the Department of Energy under BIL Section 40101(c), FOA-0002740, Grid Resilience and Innovation Partnerships (GRIP).

If a State or Tribe petitions the Secretary to be designated as an eligible entity for the purpose of executing a resilience project, it must provide both the 15% cost match for the entire allocation made by DOE to the State or Tribe (see BIL section 40101(d)(8)) and the project specific cost match requirement of 100% or 1/3 (see section 40101(h)).

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

### 1. Requirement

All work performed under DOE awards 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, DOE may deny reimbursement for the work conducted outside the United States and such costs may not be recognized

as allowable recipient cost share. The 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

There may be limited circumstances where it is in the interest of the project to perform a portion of the work outside the United States. To seek a foreign work waiver, the applicant must submit a written waiver request to DOE. Appendix B lists the necessary information that must be included in a request for a foreign work waiver.

The applicant must demonstrate to the satisfaction of DOE that a waiver would further the purposes of the ALRD and is in the economic interests of the United States. DOE may require additional information before considering a waiver request. 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.

## I. Construction

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

## J. Foreign Travel

Foreign travel and associated costs are not allowable under this ALRD.

## K. 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.

## L. Real Property

Acquisition of land or easements is not permitted under this grant program. Improvements to real property for the purpose of grid hardening or resilience is not considered acquisition of real property for the purpose of this grant program, and therefore may be permitted.

## M. 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 that 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.

In general, whether a given project must apply this requirement is 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 BIL (discussed in more detail in Appendix C), based in part on whether the infrastructure in question is publicly owned or serves a public function. For this FOA specifically, all projects subject to this FOA are considered "infrastructure" within the Buy America provision of BIL, based on implementation guidance from the Office of Management and Budget (OMB) Memorandum M-22-11 issued on April 18, 2022.

Moreover, based on the OMB guidance, 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.

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 an award.

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

## **N. Davis Bacon Act Requirements**

Projects awarded under this ALRD will be funded under BIL Division D. Accordingly, per Section 41101 of that law, all laborers and mechanics employed by the

applicant, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work funded in whole or in part under this ALRD 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 ALRD 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 DBA requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
- (2) 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 Department of Labor 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 Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

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

(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; Department of Labor 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>) or its successor system.

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 U.S. Department of Labor (“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>.

## **O. Statement of Federal Stewardship**

DOE will exercise normal Federal stewardship in overseeing the project activities performed under DOE Awards. Stewardship Activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing assistance and/or temporary intervention in usual 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.

## **P. 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.

## **Q. Reporting**

Reporting requirements are identified on the Federal Assistance Reporting Checklist and Instructions, DOE F 4600.2, attached to the award agreement. A sample checklist is available at:

[Section 40101\(d\) Formula Grants to States & Indian Tribes | netl.doe.gov](#)

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

- project locations,
- measurable improvements of resilience,
- transmission capacity upgraded, expanded, or built,
- electricity storage capacity installed,
- funding leveraged,
- stakeholders engaged,
- technical assistance provided, and
- value of contracts or agreements with minority owned business for supplies, services, or equipment.

Recipients must maintain sufficient records to substantiate this information upon request.



## R. Applicant Representations and Certifications

### i. 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.

### ii. Nondisclosure and Confidentiality Agreements Representations

In submitting an application in response to this ALRD, the applicant represents that:

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

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 or any investigative or law enforcement representative of a Federal department or agency of a suspected 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.”*

The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

- (2) Notwithstanding the provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the 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.

## **S. Recipient Integrity and Performance Matters**

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 information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313).

The applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

DOE will consider any written comments by the applicant, in addition to the other information in the designated integrity and performance system, 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.

## **VI. Questions/Agency Contacts**

### **A. Questions**

Questions regarding the content of the ALRD must be submitted through the FedConnect portal. You must register with FedConnect to respond as an interested party to submit questions, and to view responses to questions. It is recommended that you register as soon after release of the ALRD as possible to have the benefit of all responses. Applicants are encouraged to review previously issued Questions and Answers prior to the submission of questions. DOE will try to respond to a question within 3 business days, unless a similar question and answer have already been posted on the website.

Questions and comments concerning this ALRD shall be submitted not later than **3** business days prior to the application due date. Questions submitted after that date may not allow the Government sufficient time to respond.

### **B. Agency Contact**

Name: Sheldon Funk  
E-mail: Sheldon.Funk@netl.doe.gov

## **VII. Other Information**

### **A. Modifications**

Notices of any modifications to this ALRD will be posted to the FedConnect portal. You can receive an email when a modification or an announcement message is posted by registering with FedConnect as an interested party for this ALRD. It is recommended that you register as soon after release of the ALRD as possible to ensure you receive timely notice of any modifications or other announcements.

### **B. Government Right to Reject or Negotiate**

DOE reserves the right, without qualification, to reject any or all applications received in response to this ALRD 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.

Funding for all awards and future budget periods are contingent upon the availability of funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority.

### **D. Treatment of Application Information**

DOE will only use data and other information contained in applications for evaluation purposes, unless such information is generally available to the public or is already the property of the Government.

Applicants should not include trade secrets or commercial or financial information that is privileged or confidential in their application unless such information is necessary to convey an understanding of the proposed project or to comply with a requirement in the ALRD. Applications containing trade secrets or commercial or financial information that is privileged or confidential, and that the applicant does not want disclosed to the public or used by the Government for any purpose other than application evaluation, must be marked as described in this section.

The cover sheet of the application must be marked as follows and identify the specific pages containing trade secrets or commercial or financial information that is privileged or confidential:

Notice of Restriction on Disclosure and Use of Data:

Pages [list applicable pages] of this document may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan 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]

The header and footer of every page that contains trade secrets or commercial or financial information that is privileged must be marked as follows: “May contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure.”

In addition, each line or paragraph containing trade secrets or commercial or financial information that is privileged or confidential must be enclosed in brackets.

The above markings enable DOE to follow the provisions of 10 CFR 1004.11(d) in the event a Freedom of Information Act (FOIA) request is received for information submitted with an application. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under a FOIA request or otherwise. The U.S. Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose.

Subject to the specific FOIA exemptions identified in 5 U.S.C. 552(b), all information submitted to DOE by a ALRD applicant is subject to public release under the Freedom of Information Act, 5 U.S.C. 552, as amended by the OPEN Government Act of 2007, Pub. L. No. 110-175. It is the applicant’s responsibility to review FOIA and its exemptions to understand (1) what information may be subject to public disclosure and (2) what information applicants submit to the Government that are protected by law. In some cases, DOE may be unable to make an independent determination regarding which information submitted by an applicant is releasable and which is protected by an exemption. In such cases, DOE will consult with the applicant, in accordance with 10 C.F.R. 1004.11, to solicit the applicant’s views on how the information should be treated.

**Applicants shall not identify the entire Program Narrative as exempt from public disclosure.**

## **E. Evaluation and Administration by Non-Federal Personnel**

In conducting the merit review, 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. The applicant, by submitting its application, consents to the use of non-Federal

reviewers/administrators. Non-Federal reviewers must sign conflict of interest and non-disclosure agreements prior to reviewing an application. Non-Federal personnel conducting administrative activities must sign a non-disclosure agreement.

## **F. Intellectual Property Provisions (NRD-821) Nonresearch and Development**

Intellectual property rights are subject to 2 CFR 200.315 (e.g. institution of higher education or nonprofit organizations) or 2 CFR 910.362 (e.g., for-profit).

Rights in Technical Data: Normally, the government has unlimited rights in technical data created under a DOE agreement. Delivery or third-party licensing of proprietary software or data developed solely at private expense will not normally be required except as specifically negotiated in a particular agreement to satisfy DOE's own needs or to ensure the commercialization of technology developed under a DOE agreement.

## **G. Notice Regarding Eligible/Ineligible Activities**

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

Awardees and subawardees may not use grant funds, whether directly or indirectly, to support or oppose union organizing.

## **H. 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-07-16 dated May 22, 2007, found at:

<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2007/m07-16.pdf>

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).

## I. Indirect Rates

Potential recipients and major sub-recipients will need to demonstrate how indirect rates are developed using an acceptable government methodology or current rate agreement. The Prime Recipient and major sub-recipients may be subject to a DCAA or independent auditor indirect rate review if there has not been a certified rate audit within the previous twelve months. Additionally, annual indirect cost reconciliations are required, as applicable.

## J. 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.

## K. 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.

## L. Implementation of Executive Order 13798, Promoting Free Speech and Religious Liberty (November 2020)

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

## M. Interim Conflict of Interest Policy for Financial Assistance Policy

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy)<sup>25</sup> 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 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.**

## N. 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

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<sup>25</sup> 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](#).



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:

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

## **Appendix A – Statement of Project Objectives**

### **PREVENTING OUTAGES AND ENHANCING THE RESILIENCE OF THE ELECTRIC GRID**

#### **PROJECT OBJECTIVES**

This project is in direct support of Section 40101(d) of the Infrastructure Investment and Jobs Act (i.e., Bipartisan Infrastructure Law (BIL)). The objective of this project is to improve the resilience of the electric grid against disruptive events. Per BIL Section 40101(a)(1), a disruptive event is an event in which operations of the electric grid are disrupted, preventively shut off, or cannot operate safely due to extreme weather, wildfire, or a natural disaster.

#### **SCOPE OF WORK**

To achieve the objectives of this project, a Recipient shall implement a wide range of resilience measures, as described in Appendix A.1, “Section 40101 Allowances and Requirements”, of the SOPO, intended to mitigate the impact of disruptive events. The Recipient may execute resilience projects that in the determination of the Recipient, will generate the greatest community benefit in reducing the likelihood and consequences of disruptive events to the electricity grid serving its jurisdiction. Resilience projects under this project shall comply with limitations and requirements that are detailed in Appendix A.1 of the SOPO.

Each year, the Recipient shall provide a Program Narrative that describes the criteria and methods that will be used by the Recipient to make subawards to eligible entities; is adopted after notice and a public hearing; and describes the proposed funding distributions and recipients of the subawards to be provided by the Recipient. The requirements of the Program Narrative are described in the Appendix A.2, Section 40101(d) Program Narrative Template and Instructions, of the SOPO.

The Recipient shall not use more than 5 percent of the total Federal grant allocation amount to administer the grant and provide technical assistance in support of grant objectives.

#### **TASKS TO BE PERFORMED**

##### **Task 1.0: Project Management & Administration**

The Recipient shall manage and administer activities in order to achieve project objectives. The activities will include tracking and disseminating information regarding the performance of the project, as well as administrative tasks associated with Government reporting.

An initial Project Management Plan (PMP) shall be provided within ninety (90) days after the initial award. Revised PMPs shall be submitted when major project changes are proposed, with less significant changes documented in the submitted Quarterly Progress Report (QPR).

## **Phase I – Planning**

### **Task 2.0: Technical Assistance and Planning**

The Recipient shall conform to all aspects of the Program Narrative approved at execution of the award. If the Program Narrative is revised mid-year, the Recipient must provide the revised Program Narrative within 5 days following the Recipient's official adoption of the revised Program Narrative. Program Narrative revisions must be subjected to a public notice and hearing prior to adoption.

### **Task 3.0: Resilience Project Approval**

The Recipient shall prepare and submit to the DOE Project Officer Resilience Project Packages in accordance with the Resilience Project and Subaward/Subcontract Notification Term in the Assistance Agreement.

***The Recipient may not execute a proposed resilience project or issue subawards/subcontracts for resilience projects without DOE Project Officer review and written determination of adequacy of the Resilience Project Package.***

## **Phase II – Project Execution**

### **Task 4.0: Resilience Project Execution**

Upon DOE's written determination of adequacy of the Resilience Project Package, the Recipient shall execute the approved resilience project and/or issue subawards to eligible entities to execute the resilience project. For each resilience project and subaward/subcontract, the Recipient shall:

- A. monitor the performance of the entity/awardee to assure adherence to the Terms and Conditions of the subaward
- B. collect necessary information for the Recipient to provide measurable progress towards completion of the funded activity, and
- C. collect necessary information for the Recipient to verify the extent to which its established objectives are being realized.

The Recipient shall monitor the execution and performance of the resilience projects and provide the implementation status, progress towards measurable performance targets, and

verifiable progress towards resilience objectives, as part of its QPRs to the Department of Energy.

## DELIVERABLES

Periodic and final reports will be submitted in accordance with the attached “Federal Assistance Reporting Checklist” and the instructions accompanying the checklist. In addition to the reports specified in the "Federal Assistance Reporting Checklist", the Recipient will provide the following:

Task	Deliverable	Due Date	Instructions/ Template	Where to Submit
1.0	Project Management Plan (PMP)	<ul style="list-style-type: none"> <li>Due 90 days after the effective date of the award.</li> <li>Revised PMPs due within grant years as a result of major project plan changes</li> </ul>	<a href="#">Section 40101(d) Formula Grants to States &amp; Indian Tribes   netl.doe.gov</a>	<a href="https://www.eere-pmc.energy.gov/SubmitReports.aspx">https://www.eere-pmc.energy.gov/SubmitReports.aspx</a>
2.0	Program Narrative	If it is revised mid-year, Program Narrative must be submitted within 5 days following adoption	Appendix A.2 of the SOPO	Email to DOE Program Manager identified in Block 15 of Assistance Agreement
3.0	Resilience Project Package	Submitted prior to the execution of resilience projects and/or issuance of subawards for resilience projects	Award Document and <a href="#">Section 40101(d) Formula Grants to States &amp; Indian Tribes   netl.doe.gov</a>	Email to DOE Program Manager identified in Block 15 of Assistance Agreement
4.0	Subaward Monitoring Reports	Due quarterly with QPR	<a href="#">Section 40101(d) Formula Grants to States &amp; Indian Tribes   netl.doe.gov</a>	<a href="https://www.eere-pmc.energy.gov/SubmitReports.aspx">https://www.eere-pmc.energy.gov/SubmitReports.aspx</a>

All reports noted in the Deliverables section must be high quality, verified for technical accuracy, and suitable for publishing in Federal records. Other major products/materials developed shall be submitted to DOE as they are completed.

## **BRIEFINGS AND TECHNICAL PRESENTATIONS**

Upon request by DOE, the Recipient will provide additional project metrics information and briefings for presentation to the DOE explaining the plans, progress, and results of the grant activities.

## APPENDIX A.1 - Section 40101 Allowances and Requirements

The Recipient may use Federal funds to make subawards to eligible entities for activities, technologies, equipment, and hardening measures to reduce the likelihood and consequences of disruptive events, including:

- A. weatherization technologies and equipment
- B. fire-resistant technologies and fire prevention systems
- C. monitoring and control technologies
- D. the undergrounding of electrical equipment
- E. utility pole management
- F. the relocation of power lines or the reconductoring of power lines with low-sag, advanced conductors
- G. vegetation and fuel-load management
- H. the use or construction of distributed energy resources for enhancing system adaptive capacity during disruptive events, including:
  - a. microgrids; and
  - b. battery-storage subcomponents
- I. adaptive protection technologies
- J. advanced modeling technologies
- K. hardening of power lines, facilities, substations, of other systems; and
- L. the replacement of old overhead conductors and underground cables, and
- M. other measures as determined or approved by DOE.

A subaward to an eligible entity under this grant program may not be used for:

- A. construction of a
  - a. new electric generating facility or
  - b. large-scale battery-storage facility that is not used for enhancing system adaptive capacity during disruptive events, or
- B. cybersecurity.

Eligible entities are:

- A. an electric grid operator
- B. an electricity storage operator
- C. an electricity generator
- D. a transmission owner or operator
- E. a distribution provider
- F. a fuel supplier, and
- G. any other relevant entity as determined by the Secretary of Energy.

The Recipient shall ensure that, of the amounts made available to eligible entities from funds made available to the Recipient under the program, the percentage made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year is not less than the percentage of all customers in the State, Territory or Indian Tribe that are served by those eligible entities.

The Recipient may not use more than 5 percent of the Federal funding for:

- A. providing technical assistance and facilitating the distribution and sharing of information to reduce the likelihood and consequences of disruptive events; and
- B. administrative expenses associated with the program.

APPENDIX A.2 – Section 40101(d) Program Narrative Template and Instructions

**[Delete instructions in *italics* when completing Program Narrative.]**

**Bipartisan Infrastructure Law - SECTION 40101(d)**

**PREVENTING OUTAGES AND ENHANCING THE RESILIENCE OF THE ELECTRIC GRID**

**[Name of Indian Tribe or State]**

**[Date]**

**Program Narrative**

**1. Objectives and Metrics:**

*List 3-5 objectives that the applicant intends to apply for guiding their resilience investment decisions. The intent of this section of the Program Narrative is to ultimately develop a planning framework for resilience to address all-hazards including future climate implications. The first year, DOE is seeking input on criteria for determining investment decisions. At a minimum, the objectives and metrics should address:*

- a. resilience and energy justice concerns, including reducing the frequency and duration of outages in disadvantaged communities,*
- b. how the project will use strong labor standards and protections (including for direct employees, contractors, and sub-contractors), such as through the use of project labor agreements, local hire agreements, and outline of a plan to attract, train, and retain an appropriately skilled workforce (i.e., through registered apprenticeships and other joint labor-management training programs that serve all workers, particularly those underrepresented or historically excluded); plans to partner with a training provider (labor, community college, etc.); and the use of an appropriately credentialed workforce (i.e., requirements for appropriate and relevant professional training, certification, and licensure).*

*Provide the metrics that will accompany the objectives to measure outcomes associated with improving resilience, creating good-paying jobs with the free and fair choice to join a union, and advancing energy justice.*

*Indicate whether the objectives and metrics are provisional pending further discussion and consideration by the State or Indian Tribe with its stakeholders. DOE expects that recipients will establish a formal set of objectives and metrics in order to receive Year 2 formula funding. Examples of objectives and metrics, in addition to reporting on any DOE required metrics, and approaches for establishing them are available at: [Section 40101\(d\) Formula Grants to States & Indian Tribes | netl.doe.gov](https://www.netl.doe.gov)*



**2. Criteria:**

*Describe the criteria used for selecting and determining the awards to eligible entities. At a minimum, the criteria should address the following specific requirements set forth in Section 40101(d):*

Priority should be given to projects that will generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events,

The percentage made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year should not be less than the percentage of all customers in the State or Indian Tribe that are served by those eligible entities, and

Awards should be provided to eligible entities for projects within the State or on the land of the Indian Tribe.

**3. Methods:**

*Provide a description of the methods the applicant anticipates using for soliciting, awarding, and distributing funds. These might include several options, including the use of competitive solicitations, direct awards, and the use of financial instruments, such as Green Banks, to leverage the funds through 40101(d).*

*Provide also a description of the methods the applicant anticipates using to track and make public the metrics achieved by awardee uses of program funds to improve resilience by reducing the likelihood and consequences of disruptive events, to generate quality jobs, and to improve equity and community benefits.*

**4. Funding Distribution:**

*Provide a description of the proposed funding distributions and categories of recipients of the subgrants to be provided to eligible entities. Also, indicate preferences for eligible entities if they do not explicitly appear on the list of eligible entities provided in Section 40101.*

**5. Equity Approach:**

*To achieve the greatest impact for all Americans with this once-in-a-generation investment in infrastructure, it is critical that the BIL-funded projects not only contribute to the country's energy technology and climate goals, but also (1) support the BIL objectives to invest in America's workforce by including specific elements to accelerate job growth and job quality, including approaches to give workers a free and fair choice to join or form a union; and (2) advance DOE's equity, environmental and energy justice priorities, including DOE's commitment to the Justice40 Initiative. Accordingly, the*

*Program Narrative must describe how the State or Indian Tribe will ensure their proposed project will incorporate:*

- a. Quality Jobs: Strengthening prosperity by expanding good-paying, safe jobs accessible to all workers and supporting job growth through investments in domestic supply chains is a key goal set by President Biden, discussed in depth in his Executive Orders on Ensuring the Future Is Made in All of America by All of America's Workers (EO 14005), Tackling the Climate Crisis at Home and Abroad (EO 14008), Worker Organizing and Empowerment (EO 14025), Boosting Quality of Federal Construction Contracts (EO 14063), Promoting Competition in the American Economy (EO 14036), and Implementing the Infrastructure Investment and Jobs Act (EO 14052). Accordingly, this section of the Program Narrative should address efforts to achieve these goals, including*
  - i. efforts to attract, train, and retain a skilled workforce and*
  - ii. workforce opportunities in communities that have lost jobs due to the displacements of fossil energy jobs; and*
- b. Community Benefits: Section 40101(d)(5) requires a State or Indian Tribe to give priority to projects that would generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events. The Program Narrative should include an explanation of how the State or Indian Tribe will make such a determination for the projects that will be receiving funding and should include information on how the projects go beyond measures that are already being undertaken through current resilience planning by the State or Indian Tribe.*
- c. Diversity, Equity, Inclusion and Accessibility: DOE strongly encourages efforts to reach historically underserved populations, racial minorities, and women. These strategies should create the connectivity and conditions for growth where they may not exist, such as in rural and underserved communities. The Program Narrative should articulate the strategy the State or Indian Tribe will use for sharing and maximizing the project's benefits across disadvantaged communities and include a discussion of how resident, worker, and community leadership will be engaged throughout the project's duration.*

*Provide an explanation of how the State or Indian Tribe will make such a determination for the projects that will be receiving funding and should include information on how the projects go beyond measures that are already being undertaken through current resilience planning by the State or Indian Tribe.*

## **6. Technical Assistance and Administration:**

*Provide a description of how the State or Indian Tribe intends to utilize up to 5 percent of Federal grant funds for project administration and technical assistance.*

## 7. Public Notice and Hearing:

*Section 40101(d)(2)(B)(ii) requires that eligible applicants give notice and undertake a public hearing to review the criteria and methods they anticipate using to grant awards to eligible entities and the proposed funding distributions and recipients of the grant awards to eligible entities. The applicant should use the public hearing to share the approach envisioned for setting objectives and metrics and the proposed funding distributions and recipients of the grant awards to eligible entities. Provide a brief description of the notice and public hearing process, including the number and types of organizations that attended. Also, report on the outcome of the public hearing such as approaches for engaging stakeholders for establishing formal objectives and metrics and for implementing strategic planning processes. Provide a copy of the notice as an attachment to the Program Narrative.*

**Note:** DOE anticipates that the Program Narrative will be between 5 and 15 pages, depending upon the grant amount and complexity of resilience activities. DOE may reject applications and require revisions, if it determines that the program narrative lacks sufficient detail or does not comply with stated requirements. Save the information in a single file named (APPLICANT NAME PROGRAM NARRATIVE.pdf).

## Appendix B – Waiver Requests

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

As set forth in Section V.H., all work under DOE funding agreements 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. 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 ALRD and is otherwise in the economic interests of the United States to perform work outside of the United States. A request to waive the *Performance of Work in the United States* requirement must include the following:

- The rationale for performing the work outside the U.S. (“foreign work”);
- A description of the work proposed to be performed outside the U.S.;
- An explanation as to how the foreign work is essential to the project;
- A description of the anticipated benefits to be realized by the proposed foreign work and the anticipated contributions to the US economy;
- The associated benefits to be realized and the contribution to the project from the foreign work;
- How the foreign work will benefit U.S. research, development and manufacturing, including contributions to employment in the U.S. and growth in new markets and jobs in the U.S.;
- How the foreign work will promote domestic American manufacturing of products and/or services;
- A description of the likelihood of Intellectual Property (IP) being created from the foreign work and the treatment of any such IP;
- The total estimated cost (DOE and recipient cost share) of the proposed foreign work;
- The countries in which the foreign work is proposed to be performed; and
- The name of the entity that would perform the foreign work.

DOE may require additional information before considering the waiver request.

The applicant does not have the right to appeal DOE’s decision concerning a waiver request.

## 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, 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<sup>26</sup>—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 OMB Memorandum M-22-11:

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

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<sup>26</sup> BIL, § 70917(c)(1).

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<sup>27</sup> 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.

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 OMB M-22-11, the Buy America requirements of the BIL do not apply to DOE projects in which the Prime Recipient is a for-profit entity; the

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<sup>27</sup> Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

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 is seeking a waiver of the Buy America requirements, it must submit a written waiver request that 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 [\[link to awarding agency web site with information on currently applicable general applicability waivers\]](#).

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