

ADDENDUM NO. 1

RFP No. 1– GRID RESILIENCE AND INNOVATION PARTNERSHIPS PROGRAM (GRIP), ASSISTANCE LISTING NUMBER 81.254

A FEDERALLY FUNDED PROJECT

This Addendum modifies the RFP as follows:

1. **Proposal Deadline.** The proposal submission deadline is extended from **July 24, 2026 at 4 PM CDT** to **July 31, 2026 at 4 PM CDT**.
2. **BABA Letters Required.** All proposers must include applicable Build America, Buy America Act manufacturer certification letters with their proposals.
3. **Terms and Conditions.** The Terms and Conditions included in the original RFP are deleted in their entirety and replaced with the revised Terms and Conditions attached to this Addendum as **Attachment A**.

All other provisions of the RFP remain unchanged. Proposers **must** acknowledge receipt of this Addendum in their proposals. Proposals previously submitted **may be revised and resubmitted** before the new deadline.

Attachment A

Federal Terms, Conditions and Assurances - Determined by Agreement

AWARD AGREEMENT TERMS AND CONDITIONS – BIPARTISAN INFRASTRUCTURE LAW (DECEMBER 2014) (NETL – APRIL 2024):

The following are incorporated into this Award by reference:

- DOE Assistance Regulations, 2 CFR part 200 as supplemented by 2 CFR part 910 at <https://www.eCFR.gov>.
- Research Terms & Conditions (November 12, 2020) and the DOE Agency Specific Requirements (November 2020) at <https://www.nsf.gov/awards/managing/rtc.jsp>.
- National Policy Requirements (November 12, 2020) at <https://www.nsf.gov/awards/managing/rtc.jsp>.
- As applicable, Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL).
- The Recipient's application/proposal as approved by DOE.

CONFERENCE SPENDING (FEBRUARY 2015):

The subrecipient 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.

COST MATCH:

"Cost Matching" for the non-federal share is calculated as a percentage of the Federal funds only, rather than the Total Project Cost. The Total Project Cost is the sum of the Government share and Subrecipient match. The Subrecipient's cost match must come from non-Federal sources unless otherwise allowed by law.

By accepting federal funds under this award, the Recipient is liable for the cost match percentage of total expenditures incurred, even if the project is terminated early or is not funded to its completion.

The Recipient must maintain records of all project costs that you claim as cost match, including in-kind costs, as well as records of costs to be paid by DOE/NNSA. Such records are subject to audit.

STATEMENT OF FEDERAL STEWARDSHIP:

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

SITE VISITS:

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

REPORTING REQUIREMENTS (APRIL 2023):

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

PUBLICATIONS:

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy, Grid Deployment Office, under Award Number DE-GD0000885."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or

any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS:

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION:

The intellectual property provisions applicable to this award are provided as an attachment to this subaward.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS:

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

FUNDING OF BUDGET PERIODS – NETL JULY 2024:

DOE has only partially obligated funding for the completion of this Project. Additional funding will be available contingent upon (1) substantial progress toward meeting the objectives of your approved project; (2) successful negotiation of budget negotiations of Budget Period 1b; (3) successful completion of the milestones and metrics as defined in the Statement of Project Objectives and/or Project Management Plan, including approval of associated deliverables, as applicable; (4) submittal of required reports as well as meeting the established milestones defined in the Community Benefits Outcomes and Objectives (CBOO) for the given performance period; (5) adequate evidence of financial commitment for the full cost share; and (6) compliance with the terms and conditions of the award.

In the event that the Subrecipient does not meet the above contingencies or DOE disapproves a continuance of a subsequent milestone, phase, or decision point, the maximum liability to the subrecipient is the funds that are available for the current approved effort. In such event, NRECA Research reserves the right to de-obligate any remaining funds.

INSURANCE COVERAGE (DECEMBER 2014):

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds.

REAL PROPERTY (DECEMBER 2014):

Subject to the conditions set forth in 2 CFR Part 200.311, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR Part 200.311 before disposing of the property.

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

Sell the property and compensate the federal awarding agency as specified in CFR Part 200.311(c)(2); or (c) transfer title to the Federal awarding agency or to a third Party designated/approved by the Federal awarding agency as specified in CFR Part 200.311(c)(3). See 2 CFR Part 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award.

Also see 2 CFR Part 910.360 for amended requirements for Real Property for For-Profit recipients.

EQUIPMENT (DECEMBER 2014) (NETL – MAY 2024):

Subject to the conditions provided in 2 CFR 200.313 and 2 CFR 910.360 (as applicable), title to equipment (property) acquired under a Federal award will vest conditionally with the non-Federal entity.

The non-Federal entity cannot encumber this property or permit encumbrance without prior written approval by the DOE Contracting Officer and must follow the requirements of 2 CFR 200.313 before disposing of the property.

States must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.

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

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

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. However, pursuant to the FY23 Consolidated Appropriations Act (Pub. L. No. 117-328), Division D, Title III, Section 309, the Secretary, or a designee of the Secretary may, at their discretion, vest unconditional title or other property interests acquired under this project regardless of the fair market value of the property at the end of the award period.

Subject to the vesting of any property pursuant to Section 309 of the FY23 Consolidated Appropriations Act (Pub. L. No. 117-328), Division D, Title III, disposition will be made as follows: (a) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency; (b) non-Federal entity may retain title or sell the equipment after compensating the Federal awarding agency as described in 2 CFR 200.313(e)(2); or (c) transfer title to the Federal awarding agency or to an eligible third Party as specified in 2 CFR 200.313(e)(3). See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR 200.439 Equipment and other capital expenditures. See 2 CFR 910.360 for supplemental requirements for Equipment for for-profit Recipients.

SUPPLIES (DECEMBER 2014):

See 2 CFR Part 200.314 for requirements pertaining to supplies acquired under a Federal award.

See also § 200.453 Materials and supplies costs, including costs of computing devices.

INTANGIBLE PROPERTY (DECEMBER 2014):

Title to intangible property (as defined in 2 CFR Part 200.59) acquired under a Federal award vests upon acquisition in the non-Federal entity. Intangible property includes trademarks, copyrights, patents and patent applications.

See 2 CFR Part 200.315 for additional requirements pertaining to intangible property acquired under a Federal award.

Also see 2 CFR Part 910.362 for amended requirements for Intellectual Property for For-Profit recipients.

PROPERTY TRUST RELATIONSHIP (DECEMBER 2014):

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

See 2 CFR Part 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP:

a. You shall immediately notify the NRECA Research of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.

b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.

c. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines that there are significant deficiencies or concerns with your performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.

d. Failure of the subrecipient to comply with this term may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

PERFORMANCE OF WORK IN UNITED STATES:

The subrecipient agrees that at least 100% of the direct labor cost for the project (including lower-tier subrecipient labor) shall be incurred in the United States.

NEPA REQUIREMENTS:

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

DOE has made a conditional NEPA determination for this Award, and federal funding for certain tasks under this Subaward is contingent upon the final NEPA determination. The Subrecipient is authorized to proceed with the following phases and/or tasks as referenced in the SOPO approved, except where such activity is subject to a restriction set forth elsewhere in this Subaward:

- Tasks 1.0, 2.0, 3.0, 5.0, 6.0, 7.0 and subtasks 4.1, 4.2, 4.3, and 4.4 only.

This authorization is specific to the project activities and locations as described in the approved SOPO and the DOE NEPA Determination.

DOE has not authorized the following phases and/or tasks as referenced in the SOPO:

- Subtasks 4.5 through 4.7.

Should the subrecipient elect to undertake activities or change locations prior to written authorization, the subrecipient does so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.

The subrecipient agrees to abide by the conditions, limitations, mitigation measures, monitoring requirements, and reporting responsibilities specified in writing and to undertake these activities in accordance with necessary landowner approvals, required permits, and any additional approvals and mitigation requirements of other federal, state and local governmental agencies with jurisdiction by law.

If the subrecipient later intends to add to or modify the activities or locations as described in the approved SOPO and the NEPA Determination, those new activities/locations or modified activities/locations are subject to additional NEPA review and are not authorized for federal funding until written authorization is provided on those additions or modifications. Should the subrecipient elect to undertake activities or change locations prior to authorization, the subrecipient does so at risk of not receiving federal funding for those activities, and such costs may not be recognized as allowable cost share.

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS:

Requirement for System for Award Management (SAM) Unless exempted from this requirement under 2 CFR 25.110, the subrecipient must remain registered and maintain current information in SAM for the entire period of performance of the subaward. This includes providing information on the subrecipient's immediate and highest level owner and subsidiaries, as well as on all of its predecessors that have been awarded a Federal contract or Federal financial assistance agreements within the last three years, if applicable, until the prime recipient submits the final financial report required under this subaward or receives the final payment, whichever is later. This requires the subrecipient to review its information in SAM at least annually after the initial registration, and to update its information as soon as there are changes. Reviews and updates may be required more frequently due to changes in subrecipient information or as required by another award term.

If authorized to make subawards under this award, the subrecipient must notify potential lower tier subrecipients that no entity may receive a subaward until the entity has provided its unique entity identifier.

FINAL INCURRED COST AUDIT (DECEMBER 2014):

In accordance with 2 CFR Part 200 as amended by 2 CFR Part 910, DOE reserves the right to initiate a final incurred cost audit on this award and any subaward. Accordingly, NRECA Research reserves the right to audit the subrecipient as necessary to fulfill its obligations to DOE. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

LOBBYING RESTRICTIONS (MARCH 2012):

By accepting funds under this subaward, you agree that none of the funds obligated on the subaward 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.

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

NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUNE 2015):

- (1) By entering into this agreement, the undersigned attests that their non-federal entity does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- (2) The undersigned further attests that their non-federal entity does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

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

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

c. Notwithstanding 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.

IMPLEMENTATION OF EXECUTIVE ORDER 13798, PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY (NOVEMBER 2020):

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

CONTINUED USE OF REAL PROPERTY AND EQUIPMENT (OCTOBER 2022):

Real property and equipment purchased with project funds (federal share and recipient cost share) under this subaward are subject to the requirements at 2 CFR 200.311, 200.313, and 200.316 (non-Federal entities, except for-profit entities) and 2 CFR 910.360 (for-profit entities). The Recipient may continue to use the real property and equipment after the conclusion of the award period of performance so long as the Recipient:

- a. Continues to use the property for the authorized project purposes;
- b. Complies with the applicable reporting requirements and regulatory property standards;
- c. As applicable to for-profit entities, UCC filing statements are maintained; and
- d. Submits a written Request for Continued Use for DOE authorization through NRECA Research, which is approved by the DOE Contracting Officer.

Subrecipient must request authorization from the Contracting Officer to continue to use the property for the authorized project purposes beyond the award period of performance ("Request for Continued Use"). The subrecipient's written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period (e.g., perpetuity, until fully depreciated, or a calendar date where the subrecipient expects to submit disposition instructions); acknowledgement that the subrecipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.

When the property is no longer needed for authorized project purposes, the subrecipient must request disposition instructions from DOE. 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 through 200.316.

FOREIGN NATIONAL PARTICIPATION – APPROVAL REQUIRED (APRIL 2024):

If the subrecipient (including any of its lower tier subrecipients and contractors) anticipates involving foreign nationals in the performance of this subaward, the subrecipient must provide specific information about each foreign national to ensure compliance with the requirements for foreign national participation and access approvals. The volume and type of information required may depend on various factors associated with the award.

A “foreign national” is defined as a person without United States citizenship or nationality (may include a stateless person). DOE may elect to deny a foreign national’s participation in the subaward. Likewise, DOE may elect to deny a foreign national’s access to a DOE sites, information, technologies, equipment, programs, or personnel. DOE’s determination to deny participation or access is not appealable.

A foreign national may not participate on this project with prior approval from DOE.

The subrecipient must include this term in any subaward and in any applicable contractual agreement(s) associated with this subaward.

POST AWARD DUE DILIGENCE REVIEWS (APRIL 2024):

During the period of performance of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award/subaward. As part of the research, technology, and economic security risk review, DOE may contact the subrecipient project team members for additional information to inform the review.

EXPORT CONTROL (JUNE 2024):

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

Subrecipient must immediately report to DOE through NRECA Research any export control investigations, charges, indictments, convictions, and violations upon occurrence, at the subrecipient level, and for convictions/violations, provide the corrective action(s) to prevent future convictions/violations.

INTERIM CONFLICT OF INTEREST POLICY FOR FINANCIAL ASSISTANCE (MARCH 2023):

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at

<https://www.energy.gov/management/departments-energy-interim-conflict-interest-policy-requirementsfinancial-assistance>.

This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award/subaward. 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. The Subrecipient must flow down the requirements of the interim COI Policy to any lower tier subrecipient non-Federal entities, with the exception of DOE National Laboratories. Further, the subrecipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports. Prior to award, the subrecipient was required to: 1) ensure all Investigators on this subaward completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/unmanageable). Within 180 days of the date of the subaward execution, the subrecipient must be in full compliance with the other requirements set forth in DOE's interim COI Policy.

ORGANIZATIONAL CONFLICT OF INTEREST (APRIL 2024):

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

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

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the non-federal entity must procure goods and services from other sources when using project funds.

The non-federal entity must flow down the requirements of the interim COI Policy to any lower tier subrecipient non-Federal entities, with the exception of DOE National Laboratories. The subrecipient is responsible for ensuring lower tier subrecipient compliance with this term. If the subrecipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian Tribe, the subrecipient must maintain written standards of conduct covering organizational conflicts of interest.

BUY AMERICAN REQUIREMENT FOR INFRASTRUCTURE PROJECTS (MAY 2024):

A. Definitions

Components See 2 CFR 184.3 "Definitions."

Construction Materials See 2 CFR 184.3 “Definitions.”

Buy America Preference, Buy America Requirement, or domestic content procurement preference” means a requirement that no amount of funds made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

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

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

Manufactured Products See 2 CFR 184.3 “Definitions.”

Predominantly of iron or steel See 2 CFR 184.3 “Definitions.”

Infrastructure Project- See 2 CFR 184.3 “Definitions.”

Public- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement for Infrastructure Projects (Buy America Requirement)

None of the funds provided under this subaward (federal share or subrecipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

2 All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. See 2 CFR 184.5 for determining the cost of components for manufactured products; and

The Buy America Requirement only applies to those articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to the infrastructure in the project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

The Buy America Requirement only applies to an article, material, or supply classified into one of the following categories* based on its status at the time it is brought to the work site for incorporation into an infrastructure project:

- (i) Iron or steel products;
- (ii) Manufactured products; or
- (iii) Construction materials;

The Buy America Requirement only applies to the iron or steel products, manufactured products, and construction materials used for the construction, alteration, maintenance, or repair of public infrastructure in the United States when those items are consumed in, incorporated into, or permanently affixed to the infrastructure. An article, material, or supply incorporated into an infrastructure project should not be considered to fall into multiple categories, but rather must meet the Buy America Preference Requirement for only the single category in which it is classified.

All iron and steel, manufactured products, and construction materials used in the infrastructure project must be produced in the United States.

* Section 70917(c) of the BABA states that “construction materials” do not include cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. Section 70917(c) materials are excluded from Construction materials. Asphalt concrete pavement mixes are typically composed of asphalt cement (a binding agent) and aggregates such as stone, sand, and gravel. Accordingly, asphalt is also excluded from the definition of Construction materials.

Section 70917(c) materials, on their own, are not manufactured products. Further, Section 70917(c) materials should not be considered manufactured products when they are used at or combined proximate to the work site—such as is the case with wet concrete or hot mix asphalt brought to the work site for incorporation. However, when certain Section 70917(c) materials (such as stone, sand, and gravel) are used to produce a manufactured product, such as is precast concrete processed into a specific shape or form, and is in such state when brought to the work site, then that product is subject to the BABA requirements. Further clarification is provided in 2 CFR 184 on the circumstances under which a determination is made that Section 70917(c) materials should be treated as components of a manufactured product. That determination is based on consideration of: (i) the revised definition of the “manufactured products” at 2 CFR 184.3; (ii) a new definition of “section 70917(c) materials” at 2 CFR 184.3; (iii) new instructions at 2 CFR 184.4(e) on how and when to categorize articles, materials, and supplies; and (iv) new instructions at 2 CFR 184.4(f) on how to apply the Buy America preference by category.

Subrecipients are responsible for administering their subaward in accordance with the terms and conditions, including the Buy America Requirement. The subrecipient must ensure that the Buy America Requirement flows down to all lower tier subrecipients and subcontractors to comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all subawards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

C. Certification of Compliance:

Subrecipients must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this subaward. Subrecipients must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption provided in 2 CFR 184.8, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the prime recipient. Subrecipients must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

D. Waivers

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

1. Waivers must be based on one of the following justifications:
 - a) Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
 - b) Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - c) Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.
2. Requests to waive the Buy America Requirement must include the following:
 - Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
 - Subrecipient name and Unique Entity Identifier (UEI);
 - Award information (Federal Award Identification Number, Assistance Listing number);
 - A brief description of the project, its location, and the specific infrastructure involved;
 - Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
 - Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
 - List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the subrecipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
 - A detailed justification as to how the non-domestic item(s) is/are essential the project;

- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America compliant bids received for domestic products in response to a solicitation;
- A description of the market research conducted that includes who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research; and
- Anticipated impact to the project if no waiver is issued.

3. How to submit a waiver

Requests to waive the application of the Buy America Requirement must be submitted in writing to your cognizant Contracting Officer or Grants Officer through NRECA Research.

DOE may request, and the subrecipient must provide, additional information for consideration of this waiver. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (APRIL 2024):

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (Federal and non-Federal funds) to:

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

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

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

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

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

PROHIBITION RELATED TO FOREIGN GOVERNMENT-SPONSORED TALENT RECRUITMENT PROGRAMS (MARCH 2023):

A. Prohibition

Persons participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk* are prohibited from participating in this subaward. The subrecipient must exercise ongoing due diligence to reasonably ensure that no individuals participating on the DOE-funded project are participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the subrecipient must notify DOE within five (5) business days upon learning that an owner of the subrecipient or individual on the project team is or is believed to be participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. DOE may modify and add requirements related to this prohibition to the extent required by law.

B. Definitions

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

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

PARTICIPANTS AND OTHER COLLABORATING ORGANIZATIONS (APRIL 2024):

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

A. What individuals have worked on the project:

Provide the following information for individuals: (1) all senior and key personnel; (2) authorized representative of applicant with primary responsibility for business support (e.g., financial management, fiscal oversight, providing resources, award administration, etc.), if other than listed senior/key personnel, e.g., the Administrative Officer listed on the SF-424 Application; and (3) each person who has worked or is expected to work at least one person month per year on the project regardless of the source of compensation (a person month equals approximately 160 hours of effort).

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

B. Organizations

Identify all subrecipients, contractors, U.S. National Laboratories, partners, and collaborating organizations. Subrecipients must also include all foreign collaborators as outlined in the Foreign Collaboration Considerations term of the award Terms and Conditions. For each, provide name, UEI, zip code or latitude/longitude, role in the project, contribution to the project and start and end date.

HUMAN SUBJECTS RESEARCH (MARCH 2023):

Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (DOE) funding is subject to the requirements of DOE Order 443.1C, *Protection of Human Research Subjects*, 45 CFR Part 46, *Protection of Human Subjects (subpart A which is referred to as the "Common Rule")*, and 10 CFR Part 745, *Protection of Human Subjects*.

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

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

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

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

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

FRAUD, WASTE AND ABUSE (MARCH 2023):

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

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

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

TRANSPARENCY OF FOREIGN CONNECTIONS (APRIL 2024):

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

1. Any current or pending subsidiary, foreign business entity, or offshore entity that is based in or funded by any foreign country of risk or foreign entity based in a country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an entity owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the subrecipients that increases foreign ownership related to a country of risk. Each notification shall be accompanied by a complete and up-to-date capitalization table showing all equity interests held including limited liability company (LLC) and partnership interests, as well as derivative securities. Include both the number of shares issued to each equity holder, as well as the percentage of that series and of all equity on fully diluted basis. For each equity holder, provide the place of incorporation and the principal place of business, as applicable. If the equity holder is a natural person, identify the citizenship(s);
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any changes to the subrecipients' board of directors, including additions to the number of directors, the identity of new directors, as well as each new director's citizenship, shareholder affiliation (if applicable); each notification shall include a complete up-to-date list of all directors (and board observers), including their full name, citizenship and shareholder affiliation, date of appointment, duration of term, as well as a description of observer rights as applicable.
6. Any proposed changes to the equipment used on the project that would result in:
 - a. Equipment originally made or manufactured in a foreign country of risk (including relabeled or rebranded equipment).
 - b. Coded equipment where the source code is written in a foreign country of risk.
 - c. Equipment from a foreign country of risk that will be connected to the internet or other remote communication system.
 - d. Any companies from a foreign country of risk that will have physical or remote access to any part of the equipment used on the project after delivery. Should DOE determine the connection poses a risk to economic or national security, DOE will require measures to mitigate or eliminate the risk.

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

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

FOREIGN COLLABORATION CONSIDERATIONS (MARCH 2023):

A. Consideration of new collaborations with foreign entities, organizations, and governments. The subrecipient must provide NRECA Research to provide notice to DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The subrecipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.

B. Existing collaborations with foreign entities, organizations and governments. The subrecipient must provide DOE with a written list of all existing foreign collaborations, organizations, and governments in which has entered in connection with its DOE-funded award scope.

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

POTENTIALLY DUPLICATIVE FUNDING NOTICE (MARCH 2023):

If the subrecipient receives any other award or subaward of federal funds for activities that potentially overlap with the activities funded under this subaward, the subrecipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., subrecipient cost share and federal funds) from any of those other federal awards or subawards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this subaward. If there are identical cost items, the subrecipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

IMPACTED INDIAN TRIBES (MAY 2024):

If any activities anticipated to take place under this agreement could potentially impact the resources or reserved rights of Indian Tribe(s), as defined in 25 U.S.C. § 5304 (e), then the recipient/awardee agrees to develop and maintain active and open communications with the potentially impacted Indian Tribe(s), during the period of performance of the agreement, and, if necessary, after the end of the agreement. Approval by DOE must be obtained before any activities take place that could impact Tribal resources or reserved rights, including but not

limited to lands, cultural sites, sacred sites, water rights, mineral rights, fishing rights, and hunting rights.

The recipient/awardee must coordinate with DOE on all Tribal interactions. DOE will determine if formal government-to-government consultation is needed, and DOE will conduct that consultation accordingly.

- Tribal lands is as defined in 25 U.S.C. §§ 3501(2), (3), (4)(A) and (13).
- Indian Tribe is as defined in 25 U.S.C. § 5304 (e).

REPORTING, TRACKING AND SEGREGATION OF INCURRED COSTS (MARCH 2023):

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

COMMUNITY BENEFITS OUTCOMES AND OBJECTIVES (APRIL 2024):

The subrecipient must meet the stated objectives and milestones set forth in its Community Benefits Outcomes and Objectives, which is incorporated into the subaward accordingly. Reporting on the subrecipient's progress towards meeting the objectives and milestones set forth in the Community Benefits Outcomes and Objectives must be submitted, as necessary.

DAVIS-BACON ACT REQUIREMENTS (APRIL 2024):

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the subrecipient, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2,000 on an award, subaward or subcontract funded directly by or assisted in whole or in part by funds made available under this subaward 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).

Subrecipients shall provide written assurance acknowledging the DBA requirements for the subaward or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 on projects funded directly by or assisted in whole or in part by and through funding under the subaward are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

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

- (1) Ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or lower tier subrecipient awards.
- (2) Being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.

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

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

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

(6) Cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

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

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

(9) Providing the necessary information to NRECA Research to assist in preparing for the Davis Bacon Semi-Annual Labor Compliance Report for the DOE Contracting Officer, the Office of Management and Budget Control Number 1910-5165 by April 21 and October 21 of each year.

If applicable, the subrecipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/governmentcontracts/construction/seminars/events>. The subrecipient must ensure the timely submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act.

The Department of Energy has contracted with LCPtracker, a third-party DBA electronic payroll compliance software application. A waiver for the use of LCPtracker may be granted to a particular contractor or subcontractor if they are unable or limited in their ability to use or access the

Davis Bacon Act Electronic Certified Payroll Submission Waiver:

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

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

AFFIRMATIVE ACTION AND PAY TRANSPARENCY REQUIREMENTS (SEPTEMBER 2023):

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

- (1) Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients, subrecipients and contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
- (3) Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers. The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take. See OFCCP's Technical Assistance Guide at:

<https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c7110ec>.

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

Required National Policies - Contract Provisions from Appendix II:

1. (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
3. (C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of "federally assisted construction contract" in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with [Executive Order 11246](#), "Equal Employment Opportunity" ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by [Executive Order 11375](#), "Amending [Executive Order 11246](#) Relating to Equal Employment Opportunity," and implementing regulations at [41 CFR part 60](#), "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

4. (D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
5. (E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
7. (G) Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean

Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8. (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).
9. (I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#))—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
10. (J) See [§ 200.323](#).
11. (K) See [§ 200.216](#).
12. (L) See [§ 200.322](#).