



# U.S. Department of Energy Office of Clean Energy Demonstrations

## Guidance Document for Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement

**Issue Date: March 1, 2023**

*This Energy Improvement in Rural or Remote Areas guidance document is for informational purposes only. If there are inconsistencies between the Energy Improvement in Rural or Remote Areas (ERA) Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970) and the statements in this document, the FOA is the controlling document and applicants should rely on the FOA language.*



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## 1.0 Disclaimer

This document contains general guidance information that may be referenced for the Energy Improvement in Rural or Remote Areas (ERA) Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970). This document is general in nature and specific subsections may not be applicable or relevant may not apply to a particular situation based upon the individual facts and circumstances. FOA applicants are not required to read this document in its entirety to submit proposals in response to the ERA FOA issued on March 1, 2023 (FOA No. DE-FOA-0002970). If there are inconsistencies between the ERA FOA issued on March 1, 2023 (FOA No. DE-FOA-0002970) and the statements in this document, the FOA is the controlling document and applicants should rely on the ERA FOA language.

## 2.0 Applicant Eligibility Guidance

This guidance provides information about applicant eligibility to the Department of Energy (DOE) Office of Clean Energy Demonstrations (OCED) Energy Improvement in Rural or Remote Areas (ERA) Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970), specifically how eligibility is determined entities that are generally eligible to apply.

### 2.1 How will DOE determine eligibility?

Upon receipt of applications for the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970), the OCED Grants and Agreements Officer will perform an initial review to determine that:

1. The applicant meets the eligibility requirements and is eligible for an award;
2. The information and documentation required by the FOA has been submitted;
3. All mandatory submittal and eligibility requirements are satisfied; and
4. The proposed project is responsive to the objectives of the Funding Opportunity Announcement.

Applications not meeting all the eligibility requirements of the FOA will not be evaluated further.

## **2.2 What types of entities are generally eligible to apply to the Energy Improvement in Rural or Remote Areas, Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970)?**

The following entities are generally eligible to apply to the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970). Please refer to specific eligibility requirements in the 'Eligibility' section of the FOA for specific eligibility information.

1. Institutions of Higher Education
2. Non-Profit Organizations
3. For-Profit Entities
4. Tribal Nations
5. State and local governmental entities
6. Incorporated Consortia
7. Unincorporated Consortia

### **2.2.1 What is an Institution of Higher Education?**

Institution of Higher Education means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. This includes hospital educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree.

### **2.2.2 What is a Non-Profit Organization?**

A non-profit organization is defined in 2 C.F.R. § 200.1 as any corporation, trust, association, cooperative, or other organization, not including Institutions of Higher Education, that:

1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
2. Is not organized primarily for profit; and
3. Uses net proceeds to maintain, improve, or expand the operations of the organization.

However, non-profit organizations described in [Section 501\(c\)\(4\)](#) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(4)) that engaged in lobbying activities after December 31, 1995, are not eligible for Federal funding constituting an award, grant, or loan. See 2 U.S.C. § 1611.

### 2.2.3 What is a For-Profit Entity?

A For-profit entity is an organization, institution, corporation, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners.

### 2.2.4 What is a State?

A State is defined in 2 C.F.R. § 200.1 to mean any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

### 2.2.5 What is a Local Government?

A Local Government is defined in 2 C.F.R. § 200.1 as any unit of government within a state, including a:

1. County
2. Borough
3. Municipality
4. City
5. Town
6. Township
7. Parish
8. Local public authority, including any public housing agency under the United States Housing Act of 1937
9. Special district
10. School district
11. Intrastate district
12. Council of governments, whether or not incorporated as a nonprofit corporation under state law
13. Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

### 2.2.6 What is a Tribal Nation?

A Tribal Nation is an extant or historical clan, tribe, band, nation, or other group or community of Native Americans in the United States. An Indian tribe is 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 ([43 U.S.C. Chapter 33](#)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status ([25 U.S.C. 450b\(e\)](#)).

For the purposes of the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970), an eligible Indian tribe,

band, nation or other organized group or community (including Alaska Native villages), must be federally recognized. Refer to the Bureau of Indian Affairs list of [Federally Recognized Tribes](#).

### **2.2.7 What are Incorporated Consortia?**

An Incorporated Consortium is a group made up of two or more individuals, companies, or governments that work together to achieve a common objective. Consortium participants may bring together manufacturers, small and medium businesses, researchers, and state and local governments to coordinate in high-priority technology areas. Those who participate in a consortium pool their resources but are otherwise only responsible for the obligations that are set out in the consortium's agreement.

Domestic incorporated consortia are eligible to participate as a prime recipient or subrecipient. To qualify as a domestic entity, the entity must be organized, chartered, or incorporated (or otherwise formed) under the laws of a particular state or territory of the United States; have majority domestic ownership and control; and have a physical place of business in the United States. For consortia incorporated (or otherwise formed) in a foreign country, please refer to the requirements in “Foreign Entities” section.

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

If the consortium includes foreign members, the applicant must submit a separate explicit written waiver request for each foreign member. Refer to the [Foreign Entity Participation and Performance of Work in the United States Guidance](#) (Foreign Work) section for additional information and instructions on submitting a Foreign Work Waiver request.

### **2.2.8 What are Unincorporated Consortia?**

An unincorporated Consortia is a consortium that is not organized as a separate legal entity. Instead, the unincorporated consortia are created by contract. The unincorporated consortia have no predetermined rules established by law or any preexisting paradigm between shareholders or owners, management, and the board. Consequently, any rules that govern issues concerning conflict of interests, shareholder governance or management of the unincorporated consortia must be spelled out in an agreement.

Unincorporated Consortia must designate one member of the consortium to serve as the prime recipient/consortium representative. The prime recipient/consortium representative must qualify as a domestic entity.



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

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

If the consortium includes foreign members, the applicant must submit a separate explicit written waiver request in the Full Application for each foreign member. Refer to the [Foreign Entity Participation and Performance of Work in the United States Guidance](#) (Foreign Work) section for additional information and instructions on submitting a Foreign Work Waiver request.

## **2.3 Organizations Generally Not Eligible to Apply for the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970)**

The following types of organizations or persons are generally not eligible to apply for OCED FOAs but may be able to participate as a subrecipient.

1. Federally Funding Research and Development Centers (FFRDCs)
2. Federal Agencies and Instrumentalities
3. Foreign Entities
4. Entities banned from doing business with the U.S. Government
5. Persons participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk

### **2.3.1 What are Federally Funded Research and Development Centers?**

Federally funded research and development centers (FFRDCs) are public-private partnerships that conduct research and development for the United States Government. FFRDCs are operated by universities, nonprofit organizations, or an industrial firm to fulfill certain long-term needs of the government that cannot be met as effectively by existing in-house or contractor resources. See 48 C.F.R. § 35.017. A listing of FFRDCs can be found at <http://www.nsf.gov/statistics/ffrdclist/>.

### **2.3.2 Are Federal Agencies and Instrumentalities eligible to apply to OCED Funding Opportunity Announcements?**

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

### **2.3.3 Are Foreign entities eligible to apply to OCED Funding Opportunity Announcements?**

In limited circumstances, DOE may approve a waiver to allow a foreign entity to participate as a prime recipient or subrecipient. A foreign entity may submit a Full Application to the FOA, but the Full Application must be accompanied by an explicit written waiver request. Likewise, if a foreign entity seeks to be a subrecipient, the selectee must submit a separate explicit written waiver request for each proposed foreign subrecipient in the application.

Refer to the [Foreign Entity Participation and Performance of Work in the United States Guidance](#) (Foreign Work) section for instructions on submitting a Foreign Work Waiver request. DOE's decision concerning a Foreign Work Waiver request is not appealable.

### **2.3.4 Are entities banned from doing business with the United States Government eligible to apply to OCED Funding Opportunity Announcements?**

Entities banned from doing business with the United States government such as entities debarred, suspended, or otherwise excluded from or ineligible for participating in Federal programs are not eligible. See 2 C.F.R. § 200.214 and 2 C.F.R. Part 180. This includes as a prime recipient and as a subrecipient.

### **2.3.5 What is a Foreign Government-Sponsored Talent Recruitment Program?**

A Foreign Government-Sponsored Talent Recruitment Program is 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.

### **2.3.5.1 Which countries does DOE designated as a Foreign Country of Risk?**

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

## **2.4 Using U.S. Census Bureau Data to Determine Community Population for the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970)**

The U.S. Census Bureau records the population of incorporated and unincorporated communities. This information can be found on different locations within the U.S. Census Bureau website depending on the location of the community. The tips below may help you verify the population of the rural or remote community that will benefit from the proposed clean energy project based on the name of that community.

- For incorporated communities located in the continental U.S., Hawai'i, Puerto Rico, or Alaska:
  - Go to <https://data.census.gov/>
  - In the search bar, enter the name of the city, town, or similar incorporated municipality and hit enter to look up the total population
- For unincorporated communities located in the continental U.S., Hawai'i, Puerto Rico, or Alaska: check to see if your community is listed as a Census Designated Place (CDP) using commonly known names.
  - Go to <https://data.census.gov/>
  - In the search bar, enter the commonly known names of the unincorporated community
  - If a drop-down list appears, look for the name of the unincorporated community followed by "CDP" and the state. Click on this to look up the total population.

- For incorporated and unincorporated communities located on an island territory, please use the following island-specific pages to locate the appropriate data for incorporated or unincorporated places:
  - [American Samoa](#)
  - [Commonwealth of the Northern Mariana Islands \(CNMI\)](#)
  - [Guam](#)
  - [U.S. Virgin Islands](#)

Note that the above methods required entry of the name of the incorporated or unincorporated place. If you do know this information, it may be possible to search for it on [U.S. Census Bureau Data](#) by searching for a five-digit zip code or county name. This may pull up the name of a CDP directly, or it may link to a map on which you can look for relevant incorporated or unincorporated places.

Please note that, while the zip code tabulation area (five-digit) (ZCTA5) and county may be useful for identifying the name of a relevant city, town, or unincorporated area, it may not be used to verify the 10,000 inhabitant's requirement.

### 2.4.1 Budget Information

The Budget Information for Construction Programs (SF-424A) form and the OCED Budget Justification Template which is required at the time of application submission is used as the final approved cost expenditure plan, which includes both the OCED contribution and the recipient cost share. The SF-424C displays the total project costs (TPCs) broken down by cost category (e.g., administrative and legal expenses, land, architectural and engineering fees, demolition and construction costs which include personnel, supplies, equipment, etc., permit and inspection fees, contingency, etc.). Form SF-424C and its form instructions are available at [GRANTS.GOV's SF-424 Family](#) webpage.

The OCED Budget Justification Template, which is required at the time of application submission provides the budget details and the narrative which justifies the costs. More detailed budget documents may be required in the form of a Work Breakdown Structure. The OCED Budget Justification Template is available on [OCED eXCHANGE](#) under the FOA's posting.

A Work Breakdown Structure (WBS) is a project management tool that takes a step-by-step approach to complete large projects with several moving pieces. By breaking down the project into smaller components, a WBS can integrate scope, cost, and deliverables into a single tool.

## 2.5 Who in the Federal Government can make a commitment of public funds?

The OCED Grants and Agreements 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 Grants and Agreements Officer, either express or implied, is invalid.

## **2.6 Does the Government have a right to reject or negotiate applications received in response to Funding Opportunity Announcements?**

DOE reserves the right, without qualification, to reject any or all applications received in response to the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970) and to select any application, in whole or in part, as a basis for negotiation and/or award.

## **2.7 What are the regulations and requirements I need to follow once I have an award?**

DOE awards fall under the purview of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [2 CFR Part 200](#) and DOE regulations in [2 CFR Part 910](#). If an award is made, the recipient must adhere to these Federal requirements, as well as the Cooperative Agreement Terms and Conditions.

## **2.8 What is the Affirmative Action and Pay Transparency Requirements?**

These requirements prohibit federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions based on race, color, religion, sex, sexual orientation, gender identity or national origin. 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. Furthermore, recipients are prohibited from taking adverse employment actions against applicants, recipients, and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers. Refer to the Department of Labor, Office of Federal Contract Compliance Programs to gain an understanding of the requirements and possible required actions at <https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msckid=9e397d68c4b111ec9d8e6fe6c710ec>.

## 2.9 What are the requirements for the Annual Single Audit?

The Annual Single Audit is required if an educational institution, non-profit organization, or state/local government is a prime recipient or subrecipient and has expended \$750,000 or more of federal awards during the non-federal entity's fiscal year. For additional information, please refer to 2 CFR 200.501 and [2 CFR 200 Subpart F](#).

If a for-profit entity has one or more DOE awards with expenditures of \$750,000 or more during the for-profit entity's fiscal year, an independent compliance audit is required. See 2 CFR 910.501 and [2 CFR 900 Subpart F](#).

## 2.10 What is the Bipartisan Infrastructure Law-Specific Requirements?

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

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

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

## 2.11 What is the Davis-Bacon Act?

The Davis-Bacon Act (40 USC §§ 276a et seq.), or DBA, and related acts requires that all laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work funded in whole or in part under the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970) shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor.

Recipients of funding under the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970) will be required to undergo Davis-Bacon Act compliance training and to maintain competency in Davis-Bacon Act compliance. The Grants and Agreements Officer will notify the recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The DOL offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

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

## **2.12 What is an Environmental Information Volume?**

DOE is responsible for analyzing the potential environmental impacts associated with its actions, including funding a project, consistent with the National Environmental Policy Act (NEPA). The information provided to DOE by an award recipient in the Environmental Volume will inform DOE's independent NEPA analysis. An Environmental Information Volume is a document that describes the proposed project, alternatives to the proposed project, the existing environment at the project location(s), and the potential environmental impacts from the project. DOE will likely require additional information, in addition to the Environmental Information Volume, to complete the NEPA review process.

## **2.13 The award recipient will be required to complete an Environmental Information Volume during Phase 1 of the project. What are Export Controls, and should I report violations?**

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.

## 2.14 What is the Fraud, Waste and Abuse requirements?

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

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

Additionally, recipients of DOE awards must be cognizant of the requirements of [2 CFR 200.113 Mandatory disclosures](#), which states:

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

Recipients and subrecipients 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.

## 2.15 What are the Intellectual Property Requirements?

Intellectual property provisions govern the treatment, rights and requirements of inventions, patents and data made and used under the award including patent and data rights. The intellectual property provisions of awards selected under the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970) are based on the project and recipient type (e.g., small business, large business, or non-profit, etc.). The standard DOE financial assistance intellectual property provisions applicable to the various types of recipients are located at <http://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>.



## 2.16 What is the Interim Conflict of Interest Policy for Financial Assistance?

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy)<sup>1</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 Principal Investigator (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 interim COI Policy establishes standards that provide a reasonable expectation that the design, conduct, and reporting of projects funded wholly or in part under DOE financial assistance awards will be free from bias resulting from financial conflicts of interest or organizational conflicts of interest. The recipient is subject to the requirements of the interim COI Policy, and the recipient must certify that it is compliant with all the requirements in the interim COI Policy.

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.

## 2.17 How does Executive Order 13798, Promoting Free Speech and Religious Liberty affect my award?

States, local governments, or other public entities may not condition any sub-awards or subrecipients in a manner that would discriminate, or disadvantage organizations to exercise religion and participate fully in civic life without undue interference.

## 2.18 What are the U.S. Manufacturing Commitment requirements?

A primary objective of DOE’s multi-billion-dollar research, development, and demonstration investments is to cultivate new research and development ecosystems, manufacturing capabilities, and supply chains for and by United States industry and labor.

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<sup>1</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](#).

Therefore, in exchange for receiving taxpayer dollars to support the recipient's project, the recipient must agree to a U.S. Competitiveness provision requiring that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the recipient can show to the satisfaction of DOE that it is not commercially feasible. Award terms, including the specific U.S. Competitiveness Provision applicable to the various types of recipients and projects, are available at <https://www.energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>.

As noted in the U.S. Competitiveness Provision, if an entity cannot meet the requirements of the U.S. Competitiveness Provision, the entity may request a modification or waiver of the U.S. Competitiveness Provision. For example, the entity may propose modifying the language of the U.S. Competitiveness Provision in order to change the scope of the requirements or to provide more specifics on the application of the requirements for a particular technology. As another example, the entity may request that the U.S. Competitiveness Provision be waived in lieu of a net benefits statement or United States manufacturing plan. The statement or plan would contain specific and enforceable commitments that would be beneficial to the United States economy and competitiveness. Examples of such commitments could include manufacturing specific products in the United States, making a specific investment in a new or existing United States manufacturing facility, keeping certain activities based in the United States or supporting a certain number of jobs in the United States related to the technology.

DOE may, in its sole discretion, determine that the proposed modification or waiver promotes commercialization and provides substantial United States economic benefits, and grant the request. If granted, DOE will modify the award terms and conditions for the requesting entity accordingly.

More information and guidance on the waiver and modification request process can be found in the DOE Financial Assistance Letter on this topic, available at [DOE Financial Assistance Letter](#). Additional information on DOE's Commitment to Domestic Manufacturing for DOE-funded R&D is available at <https://www.energy.gov/gc/us-manufacturing>.

The U.S. Competitiveness Provision is implemented by DOE pursuant to a Determination of Exceptional Circumstances (DEC) under the Bayh-Dole Act and DOE Patent Waivers.

## **2.19 What is a subject invention?**

A subject invention is any invention conceived or first actually reduced to practice in performance of work under an award. An invention is any invention or discovery which is or may be patentable. The recipient includes any awardee, recipient, sub-awardee, or sub-recipient.

## 2.20 Who has title to subject inventions?

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

- Domestic Small Businesses, Educational Institutions, and Nonprofits: Under the Bayh-Dole Act (35 U.S.C. § 200 et seq.) and DOE policies, domestic small businesses, educational institutions, and nonprofits may elect to retain title to their subject inventions;
- All other parties: The Federal Non-Nuclear Energy Act of 1974, 42. U.S.C. § 5908, provides that the government obtains title to new inventions unless a waiver is granted;

**Class Patent Waiver:** DOE may issue a class patent waiver for the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970). Under a class patent waiver, domestic large businesses may elect title to their subject inventions similar to the right provided to the domestic small businesses, educational institutions, and nonprofits by law. To avail itself of the class patent waiver, a domestic large business must agree that any products embodying or produced through the use of a subject invention first created or reduced to practice under this program will be substantially manufactured in the United States.

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

- DEC: On June 07, 2021, DOE approved a DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES (DEC) UNDER THE BAYH-DOLE ACT TO FURTHER PROMOTE DOMESTIC MANUFACTURE OF DOE SCIENCE AND ENERGY TECHNOLOGIES. In accordance with this DEC, all awards, including sub-awards, under the FOA shall include the U.S. Competitiveness Provision in accordance with the U.S. Manufacturing Commitments section of this FOA. A copy of the DEC can be found at <https://www.energy.gov/gc/determination-exceptional-circumstances-decs>.

Pursuant to 37 CFR 401.4, any nonprofit organization or small business firm as defined by 35 U.S.C. § 201 affected by any DEC has the right to appeal it by providing written notice to DOE within 30 working days from the time it receives a copy of the determination.

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

## 2.21 What are the Government Rights in Subject Inventions?

Where applicants retain title to subject inventions, the United States government retains certain rights.

### **Government Use License**

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

### **March-In Rights**

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

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

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

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

## 2.22 Additional Recipient Integrity and Performance System Information

The recipient, at its option, may review information in the designated integrity and performance systems accessible through System for Award Management (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.gov](https://sam.gov).

DOE will consider any written comments by the recipient, in addition to the other information in the designated integrity and performance system, in making a judgment about the recipient's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by recipients as described in [2 CFR 200.206](https://www.ecfr.gov/current/title-2/chapter-I/subchapter-B/part-200/subpart-200.206).

## 2.23 Does DOE conduct reviews of financial capability?

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

## 2.24 What are eligible activities under the Funding Opportunity Announcement?

Eligible activities under the Funding Opportunity Announcement include those which promote energy improvement in rural or remote areas, but not those which encourage or support political activities such as the collection and dissemination of information related to potential, planned, or pending legislation.

## 2.25 What is an allowable cost?

An allowable cost is an expenditure compliant with federal principles dictating what types of project costs incurred by the recipient are eligible to be paid with project funds. All expenditures, including Federal funds and recipient cost share, must be allowable, allocable, and reasonable in accordance with the applicable federal cost principles.

Pursuant to [2 CFR 910.352](https://www.ecfr.gov/current/title-2/chapter-I/subchapter-B/part-910/subpart-910.352), the cost principles in the Federal Acquisition Regulations ([48 CFR 31.2](https://www.ecfr.gov/current/title-48/chapter-I/subchapter-B/part-31.2)) apply to for-profit entities. The cost principles contained in [2 CFR Part 200, Subpart E](https://www.ecfr.gov/current/title-2/chapter-I/subchapter-B/part-200/subpart-200.206) apply to all entities other than for-profits.

## 2.26 What is a pre-award cost, and can I incur pre-award costs?

A pre-award cost is an authorized cost incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award, where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and **only** with the written approval of the Federal awarding agency, through the OCED Grants and Agreements Officer assigned to the award.

Applicants selected for award negotiations (selectees) must request prior written approval to charge pre-award costs. Pre-award costs cannot be incurred prior to the Selection Official signing the Selection Statement and Analysis. Pre-award expenditures are made at the selectee’s risk. 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 selectee anticipated. This includes any action related to the proposed project that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE completing the National Environmental Policy Act (NEPA) review process. See the following subsection for additional information on NEPA requirements related to pre-award costs.

### 2.26.1 Additional Information on NEPA Requirements related to pre-award costs

DOE’s decision whether and how to distribute federal funds under the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970) is subject to the National Environmental Policy Act (NEPA). Recipients should carefully consider and should seek legal counsel or other expert advice before taking any action related to the proposed project that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE completing the NEPA review process.

DOE does not guarantee or assume any obligation to reimburse pre-award costs incurred prior to receiving written authorization from the Grants and Agreements Officer. If the recipient elects to undertake activities that DOE determines may have an adverse effect on the environment or limit the choice of reasonable alternatives prior to receiving such written authorization from the Grants and Agreements Officer, the recipient is doing so at risk of not receiving federal funding for their project and such costs may not be recognized as allowable cost share.

Nothing contained in the pre-award cost reimbursement regulations or any pre-award costs approval letter from the OCED Grants and Agreements Officer override the requirement to obtain the written authorization from the Grants and Agreements Officer prior to taking any action that may have an adverse effect on the environment or limit the choice of reasonable alternatives.

If the prime recipient elects to undertake activities that are not authorized for federal funding by the Grants and Agreements Officer in advance of DOE completing a NEPA review, the prime recipient is doing so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.

## **2.27 Can I incur construction costs?**

For the purpose of budgeting, construction is defined as all types of work done on a particular building, including erecting, altering, or remodeling. Recipients are required to obtain written authorization from the cognizant OCED Grants and Agreements Officer before incurring any major construction costs.

## **2.28 Is foreign travel allowable?**

Foreign travel costs are allowable only with the written prior approval of the cognizant OCED Grants and Agreements Officer assigned to the award. If international travel is proposed for your project, please note that your organization must comply with the International Air Transportation Fair Competitive Practices Act of 1974 ([49 U.S.C. § 40118](#)), commonly referred to as the “Fly America Act,” and implementing regulations at [41 CFR 301-10.131 through 301-10.143](#). The law and regulations require air transport of people or property to, from, between, or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a United States flag carrier, if service is available.

## **2.29 Can I expend funds for conferences?**

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.

## 2.30 What is considered equipment vs. supplies and is property disposition required?

Equipment means tangible property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

Supplies are generally defined as an item with an acquisition cost of \$5,000 or less and a useful life expectancy of less than one year. Supplies are generally consumed during the project performance. Please refer to the applicable Federal regulations in [2 CFR 200](#) for specific equipment and supplies definitions and treatment.

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](#).

## 2.31 What is Program Income?

Program Income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in [§ 200.307\(f\)](#). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds.

Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also [§ 200.407](#). See also [35 U.S.C. 200-212](#) “Disposition of Rights in Educational Awards” applies to inventions made under Federal awards.

Recipients are encouraged to review the regulations regarding Program Income and be aware of the ways in which program income can be treated during the award. The default use of program income is ‘Addition’ for the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970). Any other treatment of Program Income must be negotiated and approved by DOE.



## 2.32 Can I collaborate with Foreign Organizations and Governments on my award?

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

**Existing collaborations with foreign organizations and governments.** The recipient will be required to provide DOE with a written list of all existing foreign collaborations in which it has entered in connection with its DOE-funded award scope.

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

## 2.33 What are Technology Readiness Levels?

A technology readiness level (TRL) is a metric used for describing technology maturity. It is a measure used by government agencies to assess maturity of evolving technologies prior to incorporating that technology into a system or subsystem. Below are the definitions for each TRL (1-9):

TRL 1:	Basic principles observed and reported
TRL 2:	Technology concept and/or application formulated
TRL 3:	Analytical and experimental critical function and/or characteristic proof of concept
TRL 4:	Component and/or breadboard validation in a laboratory environment
TRL 5:	Component and/or breadboard validation in a relevant environment
TRL 6:	System/subsystem model or prototype demonstration in a relevant environment
TRL 7:	System prototype demonstration in an operational environment
TRL 8:	Actual system completed and qualified through test and demonstrated
TRL 9:	Actual system proven through successful mission operations

Please refer to [DOE’s Technology Readiness Assessment Guide](#) for additional information about technology readiness levels.

## 2.34 What is Federal Stewardship and how is it exercised by DOE?

The Federal Government has a fundamental responsibility to be effective stewards of taxpayer’s money. 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; accounting system review; organizational business reviews; incurred cost audit; independent cost estimate; reviewing performance and financial reports; providing assistance and/or temporary intervention in unusual circumstances to correct deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

## 2.35 What is Substantial Involvement?

DOE has substantial involvement in all projects funded via cooperative agreement. DOE does not limit its involvement to the administrative requirements of the award. Instead, DOE has substantial involvement in the direction and redirection of the technical aspects of the project.

Substantial involvement includes, but is not limited to, the following:

1. DOE shares responsibility with the recipient for the management, control, direction, and performance of the project.
2. DOE may intervene in the conduct or performance of work under this award for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities.

3. DOE may redirect or discontinue funding the project based on the outcome of DOE's evaluation of the project at the Go/No-Go decision point(s).
4. DOE participates in major project decision-making processes.
5. DOE may engage a private, independent engineering (IE) firm, or other third-party consultants, to assist with project monitoring and oversight. In order to adequately monitor project progress and provide technical direction and/or redirection to the recipient, DOE must be provided an adequate level of insight into various recipient activities. Government insight activities by DOE include attendance at recipient meetings, reviews and tests, as well as adequate and timely access for DOE or its IE's or consultants to perform independent evaluations of recipient's plans and processes. Recipients shall notify the DOE Project Officer of meetings, reviews, and tests in sufficient time to permit DOE participation, and will ensure that DOE, the IE, or consultant has access to the site and any and all relevant documentation sufficient to allow the IE or consultant to provide independent evaluations to DOE on the progress of the project. DOE, and its IE's or consultants, may also require access to and delivery of data generated outside of the project in order to complete the review and validation tasks. Failure to provide sufficient access to data to assess project readiness may result in a No-Go decision or termination.

Specific activities to be conducted by DOE include, but are not limited to, the following:

Risk Evaluation – DOE will review the recipient's initial Risk Mitigation Plan (RMP) for quality and completeness. DOE will also monitor updates to the RMP and actions taken by the recipient during the performance of its award to mitigate risks and improve the probability of successful execution of the proposed project. At DOE's discretion, additional independent risk analyses of the project by DOE consultants may be requested.

Independent Engineering Assessments – DOE may engage a private, independent engineering firm to assist in assessing the progress of the project and provide timely and accurate reports to DOE. The recipient will ensure that the Independent Engineering (IE) has access to any and all relevant documentation sufficient to allow the IE to provide independent evaluations to DOE on the progress of the project.

Such documentation includes, but is not limited to, the following:

- Equipment and system commercial readiness documentation
- Quarterly reports
- Go/No-Go and continuation application documentation
- Financial, marketing, management, and business plans
- Community Benefits Plan
- Project execution and operating plans
- Risk management plans
- Procurement strategies

- Engineering drawings and specifications
- Construction plans
- Integrated project schedules
- Key contracts and agreements
- Final design review documents
- Value management and engineering studies and/or plans
- Project controls and management tools, including earned value management systems
- Qualifications of the integrated project team
- Invoices submitted to DOE
- Operating plans
- Disposition plans
- Safety and Occupational Health Plans (SOHPs)

DOE will evaluate the quality and completeness of information and documentation provided by the recipient to DOE and its consultants in order to allow DOE to provide technical direction and/or redirection to the recipient about how best to achieve the purposes of the award. The recipient and/or DOE may require the IE or consultant to sign a nondisclosure agreement (NDA) which shall be negotiated in good faith and in a timely manner. Consultants to DOE may not provide technical direction and/or redirection to the recipient.

6. DOE may appoint Federal Government representatives to participate in any project governance or advisory boards that may be established.
7. To adequately monitor project progress and provide direction to the awardee, the recipient must provide DOE the opportunity to participate in the project's activities including meetings, key reviews, workshops, and community engagement activities. The recipient must notify DOE a minimum of ten business days before the activity and provide all appropriate documentation for DOE review.
8. The recipient may be required to participate and present at annual peer/program reviews.
9. The recipient will require a positive compliance recommendation from DOE prior to adopting any project-related documents and subsequent substantial changes to such documents. The recipient will provide DOE with a minimum of ten business days to review for compliance with the award. This includes, but is not limited to, business plan; project management plan; risk management plan; operations plan; intellectual property management plan, data management plan, cybersecurity plan, safety plan, Community Benefits Plan, planning documents listed in the Statement of Project Objectives, and other key documents.
10. The recipient will provide DOE with timely notice of project related publicity information regarding the recipient's organization and the project (e.g., press releases, public announcements, marketing/promotional materials). The recipient will provide DOE a minimum of five business days to review and offer input. Related publicity information includes materials developed by the recipient, subrecipients, or other participants.

11. The recipient will provide DOE a minimum of ten business days to review any risk mitigation and corrective action plans.
12. DOE will review all new subrecipients to assess whether the potential project partner would further the objectives of the award.

Please refer to the ‘Award Information’ section in the the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970) for specific information related to the Statement of Substantial Involvement.

## 2.36 What is a Go/No-Go Review?

A Go/No-Go Review is a risk management tool and a project management best practice to ensure that, for the current phase or period of performance, project success is definitively achieved and potential for success in future phases or periods of performance is evaluated, prior to beginning the execution of future phases.

Each project selected under the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970) will be subject to a periodic project evaluation referred to as a Go/No-Go Review. At the Go/No-Go decision points, DOE will evaluate project performance, project schedule adherence, the extent milestone objectives are met, compliance with reporting requirements, and overall contribution to the program goals and objectives. Federal funding beyond the Go/No-Go decision point (continuation funding) is contingent upon the following factors:

1. availability of federal funds appropriated by Congress for the purpose of this program;
2. the availability of future-year budget authority;
3. recipient’s technical progress compared to the Milestone Summary Table of the award;
4. recipient’s submittal of required reports;
5. recipient’s compliance with the terms and conditions of the award;
6. DOE’s Go/No-Go decision;
7. the recipient’s submission of a continuation application<sup>2</sup>; and
8. written approval of the continuation application by the Grants and Agreements Officer.

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<sup>2</sup> A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least ninety (90) days before the end of each budget period, the recipient must submit its continuation application, which includes the following information:

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

As a result of the Go/No-Go Review, DOE may, at its discretion, authorize the following actions:

1. continue to fund the project, contingent upon the availability of funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority;
2. recommend redirection of work under the project;
3. place a hold on federal funding for the project, pending further supporting data or funding; or
4. discontinue funding the project because of insufficient progress, change in strategic direction, or lack of funding.

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

## 3.0 Cost Sharing Guidance

This section provides information about cost sharing, including what cost sharing means, the types of cost share that can be proposed, how cost share is calculated, and general rules on topics including allowability and verification.

### 3.1 What is cost share?

Cost Share, also known as “match” and “non-Federal share,” is the portion of the costs of a federally assisted project or program not borne by the Federal government. Cost sharing augments federal funding to increase the project’s impact. It also ensures that recipients have a financial stake in the project’s success.

The terms “cost sharing” and “cost matching” are often used synonymously. See. The DOE specific regulations almost always use the term “cost sharing,” and DOE OCED generally uses the terms “cost share” and “cost sharing.” See 2 CFR § 910.130.

### 3.2 What are the types of cost share?

Every cost share contribution must be allowable under the applicable federal cost principles. In addition, cost share must be verifiable from the recipient’s records. Types of cost share include:

**Cash Cost Share** contributions encompasses all contributions to the project made by the recipient or subrecipient(s), for costs incurred and paid for during the project. Cash contributions include, but are not limited to: personnel costs, fringe costs, supply and equipment costs, indirect costs, and other direct costs.

**Allowable 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. In-kind contributions include but are not limited to the donation of space or use of equipment.

### **3.3 What cost share percentage applies?**

Please see the “Cost Sharing” section of the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970).

### **3.4 What is allowable cost share?**

Every cost share contribution must be allowable under the applicable federal regulations on cost principles. In addition, cost share must be verifiable from the recipient’s records. While it is not possible to explain what specifically qualifies for cost sharing in one or even a couple of sentences, in general, if a cost is allowable under the cost principles applicable to the organization incurring the cost and is eligible for reimbursement under the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970), then it is allowable as cost share. Conversely, if the cost is not allowable under the cost principles and not eligible for reimbursement, then it is not allowable as cost share. In addition, costs may not be counted as cost share if they are paid by the federal government under another award unless authorized by federal statute to be used for cost sharing.

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

### **3.5 Applicants are encouraged to refer to 2 CFR 200.306 and 2 CFR 910.130 for additional cost sharing requirements Are funds from other federal sources allowed as cost share?**

Funds from other federal sources are generally not eligible to be used as cost share. Questions about the eligibility of specific funds for use as cost share for an award should be submitted to the cognizant DOE OCED Grants and Agreements Officer for determination. Cost sharing commitment letters from subrecipients must be provided with the original application.

### 3.6 Are fee or profit allowable cost share?

Fee or profit, including foregone fee or profit, are not allowable as project costs (including cost share) under any resulting award from the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970). The project may only incur those costs that are allowable and allocable to the project (including cost share) as determined in accordance with the applicable cost principles prescribed in FAR Part 31 for For-Profit entities and [2 CFR Part 200 Subpart E](#) - Cost Principles for all other non-federal entities.

### 3.7 What are considered acceptable contributions?

The rules for what is allowable cost share are generally the same for all types of organizations. See 2 CFR Part 200 and 2 CFR Part 910. The following are rules found to be common, but the specifics are contained in the regulations and cost principles specific to the type of entity:

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

5. They are verifiable from the recipient's records.
6. They are not included as contributions for any other federally assisted project or program.
7. They are necessary and reasonable for the proper and efficient accomplishment of project or program objectives.
8. They are allowable under the cost principles applicable to the type of entity incurring the cost as follows:
9. For-profit organizations. Allowability of costs incurred by for-profit organizations and those nonprofit organizations listed in 2 [CFR 200 Appendix VIII to Part 200](#) is determined in accordance with the for-profit cost principles in [48 CFR Part 31](#) in the FAR, except that patent prosecution costs are not allowable unless specifically authorized in the award document. (v) Commercial Organizations. FAR Subpart 31.2—Contracts with Commercial Organizations; and
10. For all other non-federal entities, allowability of costs is determined in accordance with [2 CFR Part 200 Subpart E](#).
11. They are not paid by the federal government under another award unless authorized by federal statute to be used for cost sharing or matching.
12. They are provided for in the approved budget.



### 3.8 Who can provide cost share for a proposed project?

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

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

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

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

Cost share may also come from project participants, state or local governments or other third-party financing. Federal financing, such as DOE Loan Guarantees, cannot be leveraged by recipients to provide the required cost share or to otherwise support the same scope that is proposed under the project. Also, in general deferred or avoided costs such as tax credits may not be used as cost share. However, non-federal cost share can include Tennessee Valley Authority power sales revenue, which is specifically allowed under the Energy Policy Act of 2005. See 42 U.S.C § 16352(c) (Section 988 of Energy Policy Act of 2005) and 2 CFR 910.130(d)(2)(v).

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

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

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

Federally funded research and development (FFRDC) centers are public-private partnerships that conduct research and development for the United States Government and costs incurred are generally not allowable to meet the cost share requirement. FFRDCs may contribute cost share only if the contributions are paid directly from the contractor's Management Fee or another non-federal source.

### **3.9 How do I value and document contributions?**

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

- a) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or
- b) The current fair market value. If there is sufficient justification, the Grants and Agreements Officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The Grants and Agreements Officer may accept the use of any reasonable basis for determining the fair market value of the property.

#### **3.9.1 Valuing services of others' employees**

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

#### **3.9.2 Valuing volunteer services**

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

### **3.9.3 Valuing property donated by third parties**

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

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

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

### **3.9.4 Documentation**

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

- a) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.
- b) The basis for determining the valuation for personal services and property must be documented.

## **3.10 How will cost share be verified?**

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

The cash value calculations and amounts for all In-Kind cost share items must be justified and explained in the Cost Share section of the project Budget Justification. All cost share items must be necessary to the performance of the project.

If there are questions about In-Kind Cost share, consult the relevant DOE OCED contact before filling out the In-Kind cost share section of the Budget Justification.

### 3.11 When will the organization need to provide the required cost share?

DOE requires prime recipients to contribute the cost share amount incrementally over the life of the award. The frequency will be determined by the DOE OCED Grants and Agreements Officer during award negotiations. At a minimum, the prime recipient must meet the cost share requirement on a Budget Period basis unless a different basis is negotiated and approved by DOE.

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

### 3.12 How is cost share calculated?

Cost share is calculated as a percentage of the Total Project Cost. If applicable, Federally Funded Research and Development Center (FFRDC) costs must be included in Total Project Costs.

The following is an example of how to calculate cost sharing amounts for a project with \$1,000,000 in federal funds with a minimum 50% non-federal cost sharing requirement:

- Formula:  $\text{Federal Share (\$)} \div \text{Federal Share percentage (in decimal form)} = \text{Total Project Cost}$   
 Example:  $\$1,000,000 \div 0.5 = \$2,000,000$
- Formula:  $\text{Total Project Cost (\$)} \text{ minus } \text{Federal Share (\$)} = \text{Non-Federal Share (\$)}$   
 Example:  $\$2,000,000 \text{ minus } \$1,000,000 = \$1,000,000$
- Formula:  $\text{Non-Federal Share (\$)} \div \text{Total Project Cost (\$)} \times 100\% = \text{Non-Federal Share (\%)}$   
 Example:  $\$1,000,000 \div \$2,000,000 \times 100\% = 50\%$

Generally, Federal Share and Non-Federal Cost share are calculated with the following formulas:

- Federal Share = Total Project Cost x Federal Cost Share percentage in decimal form
- Non-Federal Cost Share = Total Project Cost x Non-Federal Cost Share percentage in decimal form

The following is an example of calculating Federal and Non-Federal cost share for a project with a Total Project Cost of \$1,000,000 and 50% Federal and 50% Non-Federal Cost Share.

- Federal Share = \$1,000,000 x 0.5 = \$500,000
- Non-Federal Cost Share = \$1,000,000 x 0.5 = \$500,000

## 4.0 Project Management Structure

Awards selected under the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970) will adhere to OCED’s ERA Program four-phased Project Management Structure (PMS) for managing scope, schedule, deliverables, and budget for OCED’s ERA projects. OCED’s ERA PMS is based off OCED’s standard PMS and is tailored for OCED’s ERA projects. This section describes OCED’s ERA PMS approach for awarded projects, [Figure 1](#) on the following page illustrates the standard ERA PMS requirements and deliverables for each of the ERA PMS phases 1-4.

Because of the community-driven nature and specific situation of each project awarded under the FOA, the level of detail required for each of the elements identified in [Figure 1](#) will be tailored to suit the size and complexity of the proposed project. Project specific requirements for each phase will be determined during award negotiation and during Go/No Go decisions.

Limited technical assistance may be available to communities to support some of the tasks of the PMS (such as data collection) as mentioned in the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970) and as agreed upon during the award negotiation. The awardee may use third parties (contracted by the awardee) to perform project tasks if allowable by the FOA and as agreed upon during award negotiation.

The main purpose of this section is to inform future award recipients that a PMS is a requirement of the award and to provide information on what a PMS is and what it could entail.



	Pre-DOE funding	Technical Assistance Available for Phases 1 -4			
<b>Engineering, Procurement, Construction</b>	<ul style="list-style-type: none"> <li>• Conceptual Design</li> <li>• Technical Readiness</li> <li>• Initial Integrated Project Schedule (IPS)</li> <li>• Initial Total Project Cost Estimate</li> </ul>	<ul style="list-style-type: none"> <li>• Engineering &amp; Design Documents</li> <li>• IPS</li> </ul>	<ul style="list-style-type: none"> <li>• Mature Engineering &amp; Design</li> <li>• Technical Risk Management (if applicable)</li> <li>• Execution ready schedule &amp; cost estimate, PM Tools</li> </ul>	<ul style="list-style-type: none"> <li>• Interim Go/NoGo reviews</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing performance Reporting</li> <li>• Tech Risk Updates, Tracking</li> <li>• Final TPC accounting</li> </ul>
<b>Business Development &amp; Management</b>	<ul style="list-style-type: none"> <li>• Business Strategy</li> <li>• Team Description</li> <li>• Workforce Plan</li> <li>• Finance Plan</li> <li>• Market potential analysis</li> </ul>	<ul style="list-style-type: none"> <li>• Project Management Plan (PMP)</li> <li>• Risk Management Plan (RMP)</li> <li>• Intellectual Property Management Plan (IPMP)</li> <li>• Financial Modelling and Plan</li> <li>• Site Selection</li> </ul>	<ul style="list-style-type: none"> <li>• Finalized Project Structure, Management, Financing</li> <li>• Ongoing Risk Management</li> <li>• Final legal, workforce, procurement agreements</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing Execution Reporting</li> <li>• Ongoing Risk Management</li> </ul>	<ul style="list-style-type: none"> <li>• Updated financial analyses</li> <li>• Revised growth plans</li> <li>• Updated Risk Management</li> <li>• Financial reporting</li> </ul>
<b>Permitting, Security &amp; Safety</b>	<ul style="list-style-type: none"> <li>• Safety and Occupational Health Plan (SOHP)</li> <li>• Regulatory Overview</li> <li>• Cybersecurity Assessment for potential threats or vulnerabilities</li> </ul>	<ul style="list-style-type: none"> <li>• Safety and Occupational Health Plan (SOHP)</li> <li>• Environmental &amp; Regulatory Plans (for permitting preparation)</li> </ul>	<ul style="list-style-type: none"> <li>• Execution ready SOHP</li> <li>• Security and cybersecurity plans</li> <li>• Permits &amp; Approvals in place for Construction</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing Permit and Environmental Reporting</li> <li>• Permits &amp; Approvals in place for Operations</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing permit, environmental, cybersecurity, and safety and occupational health reporting</li> </ul>
<b>Technical, Data &amp; Analysis</b>	<ul style="list-style-type: none"> <li>• Preliminary Technology Plan</li> </ul>	<ul style="list-style-type: none"> <li>• Specifications for commercially available technology</li> </ul>	<ul style="list-style-type: none"> <li>• Techno-Economic Analyses (TEA)</li> <li>• Lifecycle Emissions Analysis (LCA)</li> <li>• Verification and Validation (V&amp;V) and Project Completion Testing Plans</li> </ul>	<ul style="list-style-type: none"> <li>• Periodic analyses updates</li> <li>• V&amp;V data collection</li> <li>• Project completion testing and performance ramp V&amp;V</li> </ul>	<ul style="list-style-type: none"> <li>• Validated performance model</li> <li>• Finalize lifecycle and techno economic analyses</li> <li>• Operational data reporting</li> <li>• Dissemination of analyses and Lessons Learned</li> </ul>
<b>Community Engagement &amp; Impacts</b>	<ul style="list-style-type: none"> <li>• Initial Outreach</li> <li>• Stakeholder Identification</li> <li>• Communities Impact Analysis</li> <li>• Initial Community Benefits Plan (CBP)</li> </ul>	<ul style="list-style-type: none"> <li>• Community Development Analysis</li> <li>• Workforce and Community Agreements (if applicable)</li> <li>• Outreach and Stakeholder Engagement</li> </ul>	<ul style="list-style-type: none"> <li>• Finalized DEI, EEI, J40 Plans</li> <li>• Community Impact targets identified, tracking plans</li> <li>• Update CBP</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing reporting on community engagement activities</li> </ul>	<ul style="list-style-type: none"> <li>• Revised community engagement plans for operations</li> <li>• Ongoing impacts analysis</li> <li>• Socio-economic reporting</li> </ul>

Figure 1. Summary of activities and outcomes in each phase of the projects awarded under the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970).

Note: This figure is not all inclusive of the activities and outcomes described in this section. It is just an example of the activities and outcomes that a project may include.

## Application

The items listed under “Application” in [Figure 1](#) on the previous page are indicative of the elements that may be required to apply for the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970). Not all the application requirements may be listed on [Figure 1](#) above, applicants must review the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970) for all application requirements.

## 4.1 Project Management Structure Phases

For projects that receive awards, DOE will work with the applicant to tailor each of the requirements to the size and complexity of each project. Where necessary, DOE will provide guidance and/or resources to support the further development of the plans or other required documentation.

DOE review and evaluation of deliverables reflecting activities in each phase will inform the Go/No-Go decisions. The following paragraphs describe what selected applicants can expect if selected for award negotiation.

### 4.1.1 Phase 1 – Detailed Project Planning

Phase 1 activities will focus on completing specific details about the overall project plan and analysis to refine projections submitted as part of the proposal during the application. These activities must provide assurance to DOE that the overall project is technologically, financially, and legally viable, and has acceptance and participation from relevant local and community stakeholders. Community acceptance and participation could include, for example, plans to develop a skilled labor pool through Workforce and Community Agreements.<sup>3</sup>

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<sup>3</sup> The term “Workforce and Community Agreement” includes a range of formal agreements between a project developer/owner, impacted community groups, and relevant labor unions. They are tools used in project development and/or execution to ensure that benefits promised to communities and workers are realized. This could be an agreement specifying a project’s commitments to the community; it could also be a collective-bargaining agreement specifying wages, benefits, health and safety standards, workforce education and training, and other terms of employment with a labor union; or it could include both community and workforce provisions. This term as used here is inclusive of Community Benefits Agreements, Community Workforce Agreements, Good Neighbor Agreements, Project Labor Agreements, Collective-Bargaining Agreements, and other similar contractual tools. It is important to recognize that the enforcement mechanism varies depending on the provisions of the agreement. DOE’s goal is to maximize success of BIL-funded projects, and therefore DOE encourages the expansive use of Workforce and Community Agreements because legal enforceability is a key tool for accountability. DOE will not be party to the Workforce and Community Agreements. However, DOE may incorporate a Workforce and Community Agreement into the award terms and pursue action if a recipient fails to comply with the terms of the Workforce and Community Agreement.

In this Phase, recipients will complete preliminary engineering, construction, and commercial-scale designs. This will include finalization of a Project Management Plan (PMP), a Risk Management Plan (RMP), an Intellectual Property Management Plan (IPMP), the initial Safety and Occupational Health Plan (SOHP), and an initial financial plan for the entire 4-phase effort, and final site selection for the various technologies to be included in the award.

Outreach and stakeholder engagement, which should be active prior to the application process, should continue in Phase 1 as the project site(s) are finalized and community economic and development impacts become clearer. This includes a community development analysis to determine potential impacts of the project on the affected communities.

Teams should be fully engaged with the DOE's National Environmental Policy Act (NEPA) team as they develop environmental and regulatory plans to prepare for permitting and approval processes in Phase 2.

Applicants should plan on approximately 6 to 12 months to complete Phase 1. Depending on the extent of advanced planning and analysis already completed, the applicant can quickly move to Phase 2. OCED anticipates that some applicants will have already performed extensive analysis, planning, design, and community engagement as required in Phase 1, and therefore some projects may advance to Phase 2 on a shorter timeline.

#### **4.1.2 Phase 2 – Project Development, Permitting, and Financing**

Phase 2 encompasses advanced planning activities. Recipients will finalize their project development plans, commercial agreements, and financial structure, and complete the necessary permitting and approval activities required to begin construction. By the end of Phase 2, engineering designs should be sufficiently mature to support completion and execution of relevant procurement or construction contracts and overall commencement of major project execution tasks. Long-lead procurement activities may be started in Phase 2 with prior written approval from the DOE Grants & Agreements Officer.

Third-party financing agreements should be completed and relevant offtake agreements in place. Risk management plans should be revised and updated throughout the project lifecycle to reflect progress made and risks mitigated as well as new or emerging risks and corresponding management plans.

By the completion of Phase 2, Safety and Occupational Health Plans (SOHPs), and security and cybersecurity plans should be finalized and execution ready. An initial technical risk management plan shall be developed in this phase, if applicable, and shall be updated through the project's phases. All necessary permits and approvals should be in place to prepare for construction, including completion of required NEPA reviews.



Where needed, final pre-implementation Lifecycle Emissions Analysis (LCA) and Techno-Economic Analyses (TEA) activities should be completed to DOE expectations and corresponding verification and validation (V&V) plans should be in place. Community and labor engagement should have progressed toward a comprehensive Community Benefits Plan (CBP) that reflects community input and implementation experience to date and sets the stage for ongoing engagement. Community impact targets should be finalized, and tracking plans should be in place to monitor economic and social impacts of the projects as they progress to implementation.

Evidence of a contingency reserve may be required prior to beginning Phase 3 activities. See the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement (FOA) issued on March 1, 2023 (FOA No. DE-FOA-0002970) for applicable contingency reserve guidance and requirements. DOE expects that Phase 2 activities may take approximately 1-2 years but vary greatly depending on project-specific characteristics.

### **4.1.3 Phase 3 – Installation, Integration, and Construction**

Phase 3 activities will focus on implementation. DOE expects this phase to be the longest in duration and the most cost intensive. Recipients will employ industry standard project management tools and will be required to provide regular status updates and reports. Plans developed in the preceding phases will be revised and updated as appropriate to reflect actual performance. Previously and newly developed risks will be tracked, actively managed, and regularly reported to DOE. Reporting frequencies and content requirements will be unique to each award and negotiated prior to Phase 3 commencement.

Phase 3 may look significantly different for each award as there will be varying amounts of construction and retrofitting. A contingency reserve may be required for Phase 3 as required by the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970). Applicants must propose a funding level that is appropriate for the scale of the technologies and infrastructure being installed and constructed, within the limits outlined in the FOA's Award Information section.

### **4.1.4 Phase 4 – Ramp-Up and Sustained Operations**

In Phase 4, recipients will transition to operations. Phase 4 will commence with completion of award-specific criteria which will be negotiated in prior phases. Phase 4 activities will then focus on integrated system performance and ramp-up. By the end of Phase 4, each award will have demonstrated full commercial-scale design operations over an extended period.

To meet a key OCED objective that DOE-funded commercial demonstration projects catalyze follow-on private sector investments as well as Justice40 goals, Phase 4 will also include substantial financial, socio-economic, environmental, safety and occupational health, security, cybersecurity, and operational data collection and reporting to DOE.

To the extent practicable while protecting sensitive and proprietary information, DOE will synthesize, anonymize, or otherwise incorporate site and operations data into quantitative and qualitative analyses that can be promulgated to external stakeholders for the purpose of informing future private sector investment decisions.

Applicants must propose a funding level that is appropriate for the scale of the project ramp-up and initial operation using DOE funding within the limits outlined in the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023, (FOA No. DE-FOA-0002970). A contingency reserve may be required for Phase 4 as required by the FOA. Applicants are also encouraged to review the regulations regarding Program Income and be aware of the ways in which Program Income can be treated during the award. See [Section 3.28 What is Program Income?](#) for more information regarding Program Income.

## 4.2 Transitions between Phases

While the FOA is soliciting proposals for all four phases of a project, DOE will only initially commit to funding Phase 1 of project activities. Additional funding for subsequent phases will require successful completion of a Go/No-Go review at the end of each phase. Specific Go/No-Go criteria will be negotiated with each selected project for transitions between each phase. This may include a requirement to submit a standardized set of data to provide quantitative and qualitative insight on metrics spanning the technological, environmental, economic, market, workforce, Justice40 goals, and other components of the project's analysis activities. DOE may also require the negotiation of additional Go/No-Go decision points within phases (i.e., phases may include one or more budget periods with Go/No-Go points at the end of each budget period). Applicants must propose quantitative Go/No-Go criteria for each budget period as part of the Workplan.

If DOE determines that an award is making insufficient progress, additional scrutiny and oversight by DOE or its representatives may be employed and/or corrective measures negotiated and implemented. Awards may be discontinued at any of the Go/No-Go decision points if the Go/No-Go criteria, project, or program requirements are not met.

Specific project structure details for each recipient will be negotiated on a project-by-project basis to produce the best possible balance between project outcomes and DOE risk exposure. Examples of factors that may be considered as part of such negotiations include project and risk management processes, team capabilities, cost share amounts, financial contingencies, and engagement of independent monitors such as an Independent Engineers and/or CBP consultants representing DOE interests. DOE will require access to project performance and financial data necessary to track progress against a project baseline (or similar). As these projects are at scale demonstrations, to the greatest extent possible, project progress and information will be shared with interested stakeholders.

If funded through all four phases, DOE expects that the projects will reach technical and commercial viability under the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970) and will continue to operate beyond the financial assistance project period (well beyond DOE funding). Achieving DOE's broad end goals will necessitate review and evaluation of proposed project characteristics that include cost, schedule, and scope; technology; environmental; business; market; financial; management; community support or other factors throughout the project to validate assumptions made for determining commercial viability. The phased approach is designed to guide projects through the project development process incrementally. Each subsequent phase is structured to ensure that each award meets a standard level of maturity, employs a robust execution approach, and that technical and non-technical project risks are adequately and appropriately managed throughout DOE's award.

As the projects are expected to continue as self-sustaining entities operating fully independent of Federal funds, DOE may also request financial sustainability plans or long-term disposition and decommissioning plans as part of future decision points. This may include proposed sources of funding/revenue and the business model which will support the projects beyond the DOE award. This may also include an estimate of profit and loss demonstrating how the projects will maintain financial self-sufficiency and strategies to grow beyond the initial award.

## **5.0 Foreign Entity Participation and Performance of Foreign Work in the United States Guidance**

If foreign entity participation or foreign work is anticipated for a selected project under a DOE OCED FOA, the selectee must submit a Foreign Entity Participation Waiver request(s) as part of its application. The following guidance is provided to assist selectees in preparing the applicable waiver(s).

### **5.1 What is considered a Foreign Entity?**

A foreign entity is any corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments. Refer to [2 CFR 200.1](#) "Foreign organization" and [2 CFR 200.1](#) "Foreign public entity" for definition.

### **5.2 Are foreign entities eligible to submit applications for funding?**

For projects selected by DOE, all award recipients and subrecipients must be organized, chartered, or incorporated (or otherwise formed) under the laws of a state or territory of the United States; have majority domestic ownership and control; and have a physical location for business operations in the United States.

To request a waiver of this requirement, the applicant must submit an explicit waiver request in the application. Can I seek a Foreign Entity Participation waiver?

A foreign entity seeking to participate in a project funded under a DOE Funding Opportunity Announcement must demonstrate that its participation is in the best interest of the United States. To request a waiver of the U.S. entity requirement, the foreign entity must submit a Foreign Entity Participation Waiver request to the Department. If a U.S. domestic entity seeks to include a foreign entity as a subrecipient, the entity must submit a separate explicit written waiver request for each proposed foreign subrecipient.

### **5.3 What are the criteria for a Foreign Entity Participation waiver?**

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

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

### **5.4 What do I need to include in a Foreign Entity Participation Waiver request?**

A Foreign Entity Participation Waiver request must include the following:

- a) Information about the entity: name, point of contact, and proposed type of involvement in the project;
- b) Country of incorporation, the extent of the ownership/level control by foreign entities, whether the entity is state owned or controlled, a summary of the ownership breakdown of the foreign entity and the percentage of ownership/control by foreign entities, foreign shareholders, foreign state or foreign individuals;
- c) The rationale for proposing a foreign entity to participate in the project (must address criteria above);

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

DOE may also require:

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

DOE may require additional information before considering the waiver request.

## **5.5 Does the Department of Energy require that all work funded under its Funding Opportunity Announcements be performed in the United States?**

All work for DOE projects selected must be performed in the United States.

## **5.6 Can I seek a waiver of the Performance of Work in the United States requirement?**

To seek a Foreign Work Waiver of the performance of work in the United States requirement, the selectee must submit an explicit Foreign Work Waiver request. A separate Foreign Work Waiver request must be submitted for each entity proposing performance of work outside of the United States.

## 5.7 What are the criteria for the Performance of Work outside United States?

Overall, a Foreign Work Waiver request must demonstrate to the satisfaction of DOE that it would further the purposes of the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970) and is otherwise in the economic interests of the United States.

## 5.8 What do I need to include in a Foreign Work Waiver request?

A request for a Foreign Work Waiver must include the following:

- a) The rationale for performing the work outside the United States;
- b) A description of the work proposed to be performed outside the United States;
- c) An explanation as to how the foreign work is essential to the project;
- d) A description of the anticipated benefits to be realized by the proposed foreign work and the anticipated contributions to the United States economy;
- e) The associated benefits to be realized and the contribution to the project from the foreign work;
- f) How the foreign work will benefit the United States, including manufacturing, contributions to employment in the United States and growth in new markets and jobs in the United States;
- g) How the foreign work will promote manufacturing of products and/or services in the United States;
- h) A description of the likelihood of Intellectual Property (IP) being created from the foreign work and the treatment of any such IP;
- i) The total estimated cost (DOE and recipient cost share) of the proposed foreign work;
- j) The countries in which the foreign work is proposed to be performed; and
- k) The name of the entity that would perform the foreign work. Information about the entity(ies) involved in the work proposed to be conducted outside the United States. (i.e., entity seek a waiver and the entity(ies) that will conduct the work).

DOE may require additional information before considering the waiver request.

## 5.9 Can I appeal the Department of Energy's decision concerning my Foreign Entity Participation Waiver or Foreign Work Waiver requests?

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

## 6.0 Safety, Security, and Regulatory Requirements Guidance

This section provides additional information and guidance on the post-selection requirements related to the Safety, Security, and Regulatory Requirements of the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970). Refer to [Section 5.0](#), the Project Management Structure (PMS) specific to OCED's ERA projects, for the project phase for the requirements on this section. This section is intended to help selectees and recipients understand expectations and plan next steps for compliance with requirements related to safety, security, permitting, and the National Environmental Policy Act (NEPA).

### 6.1 What are the Safety Requirements?

DOE expects recipients to foster and implement a strong safety culture for the entire scope of a project. Each recipient must develop a comprehensive Safety Program that encompasses all sites, technologies, and end-uses.

Recipients must identify a lead (individual or team) for their Safety Program. The Safety Program Lead will coordinate the development of comprehensive Safety and Occupational Health Plans (SOHPs) for all relevant sites to be reviewed by OCED. These plans should address appropriate Occupational Safety and Health Administration (OSHA) requirements as well as local safety requirements for each site. SOHPs must be updated regularly throughout the life of the project. The initial SOHPs should be submitted in Phase 1 of the project, in conjunction with the 30% design phase for each site. Updated SOHPs must be submitted by the end of Phase 2 of the project, in conjunction with the 90% design phase.

Recipients should document their operational safety procedures for each site and are encouraged to obtain an audit of those procedures by an appropriately credentialed body. The operational safety procedures should include plans for staff safety, maintenance, and operation training. Recipients are encouraged to provide or direct local first responders and authorities having jurisdiction (AHJs) to relevant training materials, including those for the safe handling of any industrial activities at each site. Recipients are encouraged to provide relevant training to local first responders, which should take place prior to the end of Phase 3 of the project.

Recipients will be required to collect and submit safety related data (e.g., component failure) during the period of OCED project funding. In addition, recipients will be encouraged to voluntarily provide safety-related data for a period of five (5) years beyond the end date of the OCED project funding. This data requirement contributes to a future safety culture by encouraging open communication about safety and lessons learned. It will also enable advancements in risk assessment and codes and standards development.

## 6.2 What are the Security Requirements?

If requested by the Grants and Agreements Officer as a Just-In-Time document or post-selection requirements, selectees must submit an initial cybersecurity plan during award negotiations. Please refer to the Energy Improvement in Rural or Remote Areas Funding Opportunity Announcement issued on March 1, 2023 (FOA No. DE-FOA-0002970) - specific information and requirements.

Selectees should develop cybersecurity plans that are tailored to the unique needs of the project and its associated technologies. In addition to cybersecurity, recipients will need to address physical and information security of the project. If the Grants and Agreements Officer requested an initial cybersecurity plan to be submitted during the award negotiations as mentioned above, the recipient of an award will be required to provide updated cybersecurity plans as part of Phase 1 activities. Otherwise, the recipients of an award will be required to provide initial cybersecurity plans as part of Phase 1 activities. Recipients must deliver a final cybersecurity plan to OCED by the end of Phase 2 for review.

## 6.3 What are the Regulatory Requirements?

### 6.3.1 Permitting

OCED recognizes that there are regional differences in local and state permitting processes and that siting, permitting, and approval processes can pose schedule risks. OCED encourages early consideration of potential cost and schedule impacts of permitting processes and other regulatory requirements as well as early coordination with permitting authorities. Additionally, OCED recommends frequent communication with authorities having jurisdiction (AHJs) throughout the life of the project.

OCED encourages recipients to conduct outreach to AHJs. Frequent communication with AHJs throughout the life of the project is encouraged to minimize potential delays associated with permitting. OCED requires all applicants to submit a permitting workflow overview. Recipients of an award will be required to update the permitting workflow overview during each of the first 3 phases.

### 6.3.2 National Environmental Policy Act

DOE's decision whether and how to distribute federal funds is subject to review in accordance with the National Environmental Policy Act (NEPA); 42 U.S.C. 4321, et seq., which 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 and guidance refer to the DOE NEPA Website at <https://www.energy.gov/nepa>.



Recipients may be required to complete an Environmental Information Volume document during Phase 1 of the project. See [Section 3.9](#) for the description of an Environmental Information Volume.

The Environmental Information Volume will support OCED's determination of what level of NEPA review is required (e.g., categorical exclusion, environmental assessment, or environmental impact statement) and inform the completion of DOE's NEPA review. Engagement with the DOE's NEPA team to develop environmental plans and analyses will be a significant component of the first two phases of the awards. Completion of all NEPA-related activities is a required component of Phase 2 to 3 Go/No-Go metrics.

While NEPA compliance is a federal agency responsibility and the ultimate decisions remain with the federal agency, recipients will be required to assist in the timely and effective completion of the NEPA process. If OCED determines certain records or studies must be prepared to complete DOE's NEPA review process (e.g., a biological assessment or other environmental baseline studies), recipients may be required to prepare the records and studies; costs required to prepare the necessary records and studies may be included as part of the project costs. Proposed projects that include new construction or significant modification of existing facilities and/or infrastructure will likely require preparation of an Environmental Assessment or Environmental Impact Statement.

To facilitate the NEPA review, recipients will be requested to submit a wide array of information about the proposed project, options under consideration for the proposed project, reasonable alternatives to the proposed project for achieving similar objectives, the affected environment (to include both the natural environment and the human environment), the socio-economic setting of the proposed project and affected area surrounding the site, trends regarding changes in the surrounding environment (natural, socio-economic, human) and the potential impacts (both positive and negative) for the proposed project, its options and its reasonable alternatives.

NEPA compliance activities should be accounted for in the project scope, schedule, and budget. Recipients will be expected to cooperate fully with those who prepare the NEPA documents and implement the NEPA process.

### **6.3.3 Other Permitting and NEPA Considerations**

Recipients are encouraged to consider the following items to help consultation and permitting processes run as efficiently as possible:

- To minimize environmental impacts, recipients are encouraged to leverage existing facilities, infrastructure, and rights-of-way to the maximum extent practical. Where possible, teams are also encouraged to coordinate and co-locate project development with other existing or planned energy/infrastructure development projects to help minimize potential environmental and community impacts (i.e., "Dig once" concept).

- OCED strongly encourages early and frequent communication with all applicable Federal, Tribal, State, and Local AHJs. OCED further encourages applicants to seek out and propose improvements to advance the project review process, in coordination with other efforts such as Federal-State partnerships that may already be underway.
- Several publicly available sources of data related to multiple use, environmental, and permitting considerations exist that will be of benefit to applicants as they evaluate potential sites. Where possible, applicants are encouraged to work with relevant agencies to explore access to information that has already been collected. Such sources include Federal, State, and regional data resources.