



Request for Proposals: Massachusetts Subawards from  
Section 40101(d) Formula Grants to States and Tribes –  
Preventing Outages and Enhancing the Resilience of the  
Electric Grid

FY 2025 – NZG – 01

Date of Issue: July 12, 2024

Responses Due: October 4, 2024

Total Funding Currently<sup>1</sup> Available: \$9,209,845

All proposals must be submitted to:

[grid@masscec.com](mailto:grid@masscec.com)

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<sup>1</sup> Additional annual Federal awards may increase future available funds.

## I. SUMMARY

The Massachusetts Clean Energy Technology Center (“MassCEC”) seeks applications for subawards from the funding opportunity: Preventing Outages and Enhancing the Resilience of the Electric Grid - Formula Grants to States and Indian Tribes, as defined in section 40101(d) of the Infrastructure Investments in Jobs Act (“IJA”, also known as the Bipartisan Infrastructure Law (“BIL”). The funding aims to enhance the resilience of the electric grid, prevent outages, and mitigate the impact of disruptive events through eligible investments in activities, technologies, equipment, and other hardening measures. A full list of entities eligible for subawards (“Subawardees”) and eligible investments are provided in Section IV.

Massachusetts received a 40101(d) award from the U.S. Department of Energy (“DOE”) of \$9,209,845 for fiscal years (FY) 2022 and 2023 to implement the proposed Massachusetts Program Narrative (the “Program”).<sup>2, 3</sup> Massachusetts may be eligible for similar annual allocations for FY2024 through FY2026. MassCEC will open the solicitation in 2024 and anticipates accepting proposals on a semiannual basis. Contingent upon subawards made and DOE’s allocation of funding for FY2024 through FY2026, the Program will revisit the solicitation, make any necessary revisions to best meet Program goals, and re-open or issue a new solicitation. Funds remaining from prior fiscal years would be available in later fiscal years.

Section 40101(d)(6) requires a Small Utilities Set-Aside, by which the percentage of funding made available to entities that sell not more than 4,000,000 megawatt-hours (MWh) per year (“Small Entities”) is not less than the percentage of all customers in Massachusetts that are served by those eligible entities. Please see Section IV for more details regarding the Small Utilities Set-Aside. Additionally, Massachusetts has committed to ensuring that the benefits of the funding are shared equitably, advancing the State’s equity, environmental, and energy justice priorities,<sup>4</sup> and in line with the [Administration’s Justice40 Initiative](#).

MassCEC’s approved application to the DOE included a Program Narrative intended to apply to each year of the five (5) year award period. The Program Narrative includes objectives and metrics that MassCEC intends to use to guide applicant project design; criteria to be used for selecting and determining awards to eligible entities; and methods anticipated for awarding

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<sup>2</sup> Fiscal year corresponds to the Federal fiscal year of October 1 through September 30.

<sup>3</sup> The Massachusetts Program Narrative is available here: <https://www.masscec.com/iija-section-40101d-preventing-outages-and-enhancing-resilience-electric-grid>.

<sup>4</sup> Please see the Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs (EEA) (<https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>) and the Environmental Justice Strategy of EEA (<https://www.mass.gov/doc/february-2024-environmental-justice-strategy-english/download>) for further information regarding the Commonwealth’s equity, environmental, and energy justice priorities.

and distributing funds. A link to the Program Narrative is provided on the MassCEC website.<sup>5</sup> All applications from MassCEC to the DOE for additional FY funding awards, and applications to MassCEC for subawards, must adhere to the approved Program Narrative.<sup>6</sup>

## II. ABOUT MASSCEC

MassCEC is a quasi-state economic development agency dedicated to accelerating the growth of the clean energy sector across the Commonwealth to spur job creation, deliver statewide environmental benefits, and to secure long-term economic growth for the people of Massachusetts. MassCEC works to increase the adoption of clean energy while driving down costs and delivering financial, environmental, and economic benefits to energy users and utility customers across the state.

MassCEC’s mission is to accelerate the clean energy and climate solution innovation that is critical to meeting the Commonwealth’s climate goals, advancing Massachusetts’ position as an international climate leader while growing the state’s clean energy economy. MassCEC is committed to creating a diverse, equitable, and inclusive organization where everyone is welcomed, supported, respected, and valued. We are committed to incorporating principles of diversity, equity, inclusion, and environmental justice in all aspects of our work to promote the equitable distribution of the health and economic benefits of clean energy and support a diverse and inclusive clean energy industry. MassCEC strives to lead and innovate in equitable clean energy and climate solutions.

## III. PROGRAM OBJECTIVES AND EQUITY APPROACH

MassCEC has defined the following Program objectives and Program implementation strategy:

- **Objective 1:** Identify and fund projects that can improve energy reliability and resilience, reducing the cost and number of outages for communities and underserved populations, including environmental justice communities (“EJCs”)<sup>7</sup> and disadvantaged communities (“DACs”)<sup>8</sup>.
- **Objective 2:** Support clean energy and decarbonization solutions, including building electrification.

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<sup>5</sup> The Massachusetts Program Narrative is available here: <https://www.masscec.com/ijja-section-40101d-preventing-outages-and-enhancing-resilience-electric-grid>.

<sup>6</sup> The Program Narrative may be amended, subject to approval by DOE and after a public hearing process.

<sup>7</sup> Environmental Justice Community is defined in the 2021 law, “An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy” as “a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income.”

<sup>8</sup> For DOE’s definition of disadvantaged community, refer to <https://www.energy.gov/justice/justice40-initiative>.

- **Objective 3:** Advance the Commonwealth’s equity, environmental justice, and energy justice priorities, sharing the benefits of the Program equitably and in line with the Justice40 Initiative.
- **Objective 4:** Create good-paying jobs with the free and fair choice to join a union.<sup>9</sup>

To further the Commonwealth’s [Clean Energy and Climate Plan for 2050](#), related [Environmental Justice Policy](#), and the [Administration’s Justice40 Initiative](#), applicants should seek to partner with EJs and/or DACs. The strongest applications will propose projects designed in collaboration with communities. Communities should identify the problem that the proposed investment can help to solve and the eligible Subawardee should provide the relevant solution. Eligible Subawardees should show evidence of strong channels of communication with the relevant community. In line with the [Administration’s Justice40 Initiative](#), at least 40% of the awarded funds will benefit DACs and/or EJs that are marginalized, underserved, and overburdened by pollution.

#### IV. ELIGIBILITY

The DOE provides guidance on the types of eligible Subawardees and investments. However, any application must also demonstrate that it satisfies the Program Objectives defined in Section III above.

##### **Eligible Subawardees:**

- Electric grid operators;
- Electricity storage operators;
- Electricity generators;
- Transmission owners or operators;
- Distribution providers;
- Fuel suppliers; and
- Any other relevant entity, as determined by the Secretary of DOE.<sup>10</sup>

A percentage of the total funding for the Program will be made available specifically for eligible Subawardees that sell not more than 4,000,000 MWh of electricity per year (“Small Entities”). MassCEC estimates that the amount made available for Small Entities is, at a minimum, 59% of the available funds. This amount is determined based on an estimate of the percentage of all customers in Massachusetts that are served by eligible Small Entities.<sup>11</sup> If an applicant believes they qualify as a Small Entity but are not included in the EIA data reported in Table 10 (2022

<sup>9</sup> Please note that projects must comply with the list of Eligible Projects, i.e., not be solely job creation and/or training programs.

<sup>10</sup> MassCEC must first request a determination of “eligible entity” status from DOE. The eligible entity status request form is available via the DOE website, [Eligible Entity FPO GDO Approval Form final.pdf \(doe.gov\)](#).

<sup>11</sup> In line with DOE guidance, MassCEC used data reported on forms EIA-861 and 861S to the Energy Information Administration (EIA) ([https://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table\\_10.pdf](https://www.eia.gov/electricity/sales_revenue_price/pdf/table_10.pdf)).

Utility Bundled Retail Sales – Total) of the Electric Sales, Revenue, and Average Price Reports,<sup>12</sup> you may submit alternative documentation with your application demonstrating eligibility.

### **Cost Match Requirements:**

- Eligible entities that sell >4,000,000 MWh of electricity per year **OR** who do not sell electricity must match between 100% to 115% of the subaward value.
- Eligible entities which sell ≤4,000,000 MWh of electricity per year must match between one-third (1/3) and one-third (1/3) plus 15% of the subaward value.

The amount of cost match will be determined upon subaward notification.

### **Eligible Projects:**

- Weatherization technologies and equipment;
- Fire-resistant technologies and fire prevention systems;
- Monitoring and control technologies;
- Undergrounding of electrical equipment;
- Utility pole management;
- Relocation of power lines or the reconductoring of power lines with low-sag, advanced conductors;
- Vegetation and fuel-load management;
- Use or construction of distributed energy resources (DERs) for enhancing system adaptive capacity during disruptive events, including:
  - microgrids; and
  - battery-storage subcomponents
- Adaptive protection technologies;
- Advanced modeling technologies;
- Hardening of power lines, facilities, substations, or other systems; and
- Replacement of old overhead conductors and underground cables.
- **All projects must be approved by DOE before subawards are granted.**

### **Ineligible Projects:**

- Construction of new electric generation facilities, large scale battery storage not used to supply electricity where needed during disruptive periods, and cybersecurity measures are not considered eligible projects.
- Applicants with active proposals submitted under IIJA Section 40101(c), DE-FOA-0002740 ("Grid Resilience and Innovation Partnership" or "GRIP") Program may not submit a project with the same scope to this funding opportunity. Please notify the

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<sup>12</sup> See [https://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table\\_10.pdf](https://www.eia.gov/electricity/sales_revenue_price/pdf/table_10.pdf).

MassCEC team in Attachment A of the application if you have applied for funding from the GRIP Program.

**Program Period:**

Awards may be extended to span the amount of time necessary for recipients to complete all subaward project efforts, for up to ten (10) years.

**V. ADDITIONAL SELECTION CRITERIA**

The following selection criteria will be considered. Please see Attachment G – Scoring Rubric for more details regarding application scoring.

- Projects must be sited in Massachusetts.
- Priority will be given to projects that will “generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events.”<sup>13</sup> Preference will be given to projects that benefit EJCs and/or DACs. In determining priority for projects that provide the greatest community benefits, MassCEC may prefer applicants that can:
  - Demonstrate how the proposed project will ensure continuity of critical services during major event-related outages, especially services to underserved populations, including EJCs and DACs;
  - Demonstrate a plan for meaningful collaboration with communities, including EJCs and DACs, when developing and implementing the project;
  - Demonstrate benefits from the project to communities and underserved populations, including EJCs and DACs;
  - Demonstrate community support for the project, including via letters of support from groups representing the community interest;
  - Utilize a negotiated Community Benefits Agreement;<sup>14</sup>
  - Conduct an initial screening analysis to help municipalities identify opportunities with their utilities for projects that will measurably improve electric resilience for the municipality or a substantial community within that municipality. This initial analysis should compare the cost of the project to the identified benefits the project will provide, including both monetizable benefits, such as peak demand reduction and renewable energy generation revenue, and non-monetizable benefits such as increased resilience;
  - Demonstrate how the project will create jobs or provide relevant training, via methods such as

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<sup>13</sup> In line with BIL Section 40101(d) requirements (see pg. 496 of <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>).

<sup>14</sup> For ideas on how to create a community benefits agreement see: <https://www.energy.gov/diversity/community-benefit-agreement-cba-toolkit>.

- Use of strong labor standards and protections for direct employees, contractors, and sub-contractors,
  - Plans to partner with training providers, apprenticeship programs, or other organizations related to job creation,
  - The use of an appropriately credentialed workforce (i.e., requirements for appropriate and relevant professional training, certification, and licensure),
  - Plans to hire workers from DACs, EJs, local project communities, and/or other workers who are underrepresented or who have historically been excluded.
- Provide metrics that will measure outcomes in line with the Program Objectives outlined in the Program Narrative;
  - Demonstrate how the project will support the Commonwealth’s clean energy and decarbonization goals as defined in the Commonwealth’s Clean Energy and Climate Plan for 2050; and
  - Demonstrate that the project is in line with the Administration’s Justice40 Initiative and the State’s EJ Policy and Strategy.
- MassCEC may prefer project sites that have taken advantage of other MA programs related to energy efficiency, electrification, resilience, and clean energy, or that will seek to take advantage of these programs in parallel to the proposed project.

MassCEC will also consider the following additional project criteria, as reflected in Attachment G – Scoring Rubric:

- Applications that incorporate innovative, replicable, and scalable financing approaches and business models that could support the development of reliability and resilience solutions beyond the federal funding available in this solicitation;
- Applications that develop solutions for private buildings that have a public benefit (e.g., grocery stores, gas stations), and associated proposals for arrangements that allow the public use of the resilience benefits at the private sites when needed (e.g., during outages greater than a certain duration); and
- Projects that support public resilience needs that would not otherwise be funded by the private sector (e.g., where the benefits are indirect or distributed in a way that makes funding or investment unlikely).

## VI. FEDERAL FLOW DOWN REQUIREMENTS

MassCEC must apply the terms and conditions of the federal 40101(d) Award, as applicable, including the provisions regarding intellectual property rights (per 201 CFR 200.315 or 2 CFR 910.362, as applicable), to all Subawardees (and subcontractors, as appropriate), as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, MassCEC must apply the Award terms as required by 2 CFR 200.327 to all Subawardees (and subcontractors, as appropriate), and to require their strict compliance therewith. Subawardees must be domestic

entities<sup>15</sup> and must not be debarred or suspended entities. Awards will have requirements including, without limitation, the Buy America Requirement<sup>16</sup>, subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the “Davis-Bacon Act” (DBA), Executive Order 11246 Affirmative Action and Pay Transparency Requirements, and National Environmental Policy Act (NEPA) requirements.

## VII. SUBAWARDEE REPORTING REQUIREMENTS

### Quarterly Reporting

As required by DOE, Subawardees will submit Quarterly Progress Reports (QPR) including budget, incurred costs, milestone status, metrics on project attributes, and risk management activities (see Attachment I – Project Quarterly Progress Report Template) to MassCEC.<sup>17</sup>

### Annual Reporting

MassCEC will track project outcomes by collecting reporting on a set of Impact Metrics annually that will be determined in conjunction with Subawardees, as required by DOE (see Attachment J – Annual Reporting Template).<sup>18</sup> As part of the application, Applicants should develop a set of proposed Impact Metrics, baselines, and targets that are designed to measure all intended outcomes and benefits of the project, to the extent practicable. Applicants should consider both the Impact Metrics provided in Attachment F – Proposed Project Metrics, tab “DOE Project Metrics” as well as additional metrics as reflected in Attachment F – Proposed Project Metrics, tab “Additional Metrics”.

Additional guidance on the objectives, metrics, and approach to community benefits can be found in the Program Narrative.<sup>19</sup> As required by DOE, MassCEC will recommend projects that “generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events”<sup>20</sup> for subawards. The outcomes and metrics proposed

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<sup>15</sup> 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 (as noted in MassCEC’s Assistance Agreement with DOE).

<sup>16</sup> For more information regarding the Buy America Requirement, including instructions for requesting a waiver, please visit the DOE Buy America landing page: <https://www.energy.gov/management/build-america-buy-america>.

<sup>17</sup> See instructions for completing the Quarterly Progress Report: <https://netl.doe.gov/sites/default/files/2023-06/PMP-QPR%20Instructions.pdf>.

<sup>18</sup> See Annual Program Metrics and Impact Report instructions: <https://netl.doe.gov/sites/default/files/2024-01/Annual%20Program%20Metrics%20and%20Impact%20Report%20Instructions.pdf>.

<sup>19</sup> The Massachusetts Program Narrative is available here: <https://www.masscec.com/iija-section-40101d-preventing-outages-and-enhancing-resilience-electric-grid>.

<sup>20</sup> In line with BIL Section 40101(d) requirements (see pg. 496 of <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>).



by the Applicant will help MassCEC evaluate potential project benefits when scoring. Please see Attachment G – Scoring Rubric for more details about application scoring.

## VIII. ESTIMATED TIMELINE

The timeline below is subject to change at MassCEC’s discretion. Please note that MassCEC anticipates that it will solicit projects approximately semiannually. The timeline below represents the first application cycle. The timing for subsequent application cycles remains to be determined.

Item	Estimated Date
Release of RFP	July 12, 2024
Questions due to MassCEC via email to <a href="mailto:grid@masscec.com">grid@masscec.com</a>	July 24, 2024
Q&A Meeting for Prospective Applicants	July 24, 2024
Questions with Answers Posted to MassCEC Website	August 2, 2024
Proposals Due	October 4, 2024
Interviews of Top Applicants	2-4 weeks after proposals due
Recommended Projects Submitted to DOE for Review	6-8 weeks after proposals due
Award Notification	Dependent on DOE review timeline; likely 4-6 months following MassCEC submittal to DOE

## IX. HOW TO APPLY

Applicants should submit all materials to [grid@masscec.com](mailto:grid@masscec.com). Please include “MA 40101(d) Subaward Application” in the subject line. **Applications must be submitted by October 4th, 2024.** Under no circumstances will MassCEC accept applications submitted after the deadline.

Applicants may be required to interview with a review panel. Only those Applications deemed strongest by reviewers will be invited for an interview.

Applicants must include the following attachments and application documents (please see Attachment templates in the RFP packet):

- **Attachment A – Application Form**
- **Attachment B – Signature and Acceptance Form**

- **Attachment C – Project Narrative**
- **Attachment D – Project Workplan**
- **Attachment E – Budget Justification Workbook**
- **Attachment F – Proposed Project Metrics**
- **Attachment H – Cost Match Commitment and Support Letters**
- Additional documentation, defined below.

Per the resilience project and subaward/subcontract notification requirements outlined in the 40101(d) Award to MassCEC,<sup>21</sup> Applicants must also submit the following documentation:

- SF-424A Budget Information form;
- A completed Environmental Questionnaire covering the proposed activities;
- Listing of Foreign Nationals for Applicant and technical assistance contractors in accordance with the Foreign National Participation – Approval term;
- Performance of Work in the United States waiver (if applicable);
- Buy America for Infrastructure Projects waiver (if applicable); and
- Domestic entity waiver for subrecipients (if applicable).

The following Attachments have been provided for informational purposes only – they are not required for the application.

- Attachment G – Scoring Rubric
- Attachment I – Quarterly Progress Report Template
- Attachment J – Annual Reporting Template

It is the sole responsibility of the Applicant to ensure that the Application is complete and properly submitted, including all necessary attachments, letters, or other supporting documentation. At its sole discretion, MassCEC may request supplemental materials from the Applicant and such materials must be submitted within ten (10) days of the request or the Application may be rejected without further review.

## X. PROJECT BUDGET

The award shall be paid to Subawardee as expenses are incurred. In addition, Subawardee’s cost match shall be met in proportion to award payments. MassCEC expects to be invoiced at a regular cadence (e.g., monthly); specific terms will be determined in Subawardee’s final grant agreement. All invoices must be supported by documented costs.

To track project status, expected project milestones are to be memorialized, with target completion dates and scopes of work associated with each milestone, in a detailed workplan (see Attachment D – Project Workplan).

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<sup>21</sup> For additional information on all Federal requirements, please refer to Attachment 1 to the RFP (Sample Subaward Grant Agreement) and Attachment 3 thereto (Assistance Agreement).

Grant funds will not be disbursed until initiation of the project, including the execution of a grant agreement, and the final approval of the proposed Project Workplan by the Program Technical Consultant, if applicable, and MassCEC staff. Awardees will be notified in writing when each of these steps is complete. Applicants should give careful thought to their cash flow needs and must be prepared to support those needs. The grant agreement will require the Applicant to obtain MassCEC approval for changes or revisions to the Project Workplan or the budget.

### **Eligible Budget Items:**

Each budget item must be justified as to why it is necessary for the project. Budgeted items must be allowable, allocable, and reasonable in accordance with the administrative requirements prescribed in 2 CFR 200, and the applicable cost principles for each entity type: FAR Part 31 for For-Profit entities; and 2 CFR Part 200 Subpart E - Cost Principles for all other non-federal entities.<sup>22</sup>

## **XI. CONTACT INFORMATION FOR QUESTIONS**

Please direct any questions to [Grid@masscec.com](mailto:Grid@masscec.com). If accessibility to computer, internet or software may prohibit you from contacting us, or if there are other challenges with accessibility such as language or writing barriers, please call Corrin Moss, Program Manager, at 617-315-9316.

## **XII. GENERAL REQUEST FOR PROPOSALS CONDITIONS**

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### **NOTICE OF PUBLIC DISCLOSURE**

As a public entity, MassCEC is subject to Massachusetts' Public Records Law, codified at Chapter 66 of the Massachusetts General Laws. Thus, any documentary material, data, or other information received by MassCEC from an applicant is a public record subject to disclosure. Applicants shall not send MassCEC any confidential or sensitive information in response to this RFP. If confidential information is submitted as part of the application and not clearly marked as confidential, such information may be made publicly available by MassCEC without further notice to the Applicant.

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### **DISCLAIMER & WAIVER AUTHORITY**

This RFP does not commit MassCEC to award any funds, pay any costs incurred in preparing an application, or procure or contract for services or supplies. MassCEC reserves the right to

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<sup>22</sup> As referenced in Attachment E (SF-424 Budget Justification Workbook).

accept or reject any or all applications received, waive minor irregularities in submittal requirements, modify the anticipated timeline, request modification of the application, negotiate with all qualified Applicants, cancel or modify the RFP in part or in its entirety, or change the application guidelines, when it is in MassCEC's best interests.

This RFP has been distributed electronically using MassCEC's website. It is the responsibility of Applicants to check the website for any addenda or modifications to an RFP to which they intend to respond. MassCEC accepts no liability and will provide no accommodation to Applicants who submit an application based on an out-of-date RFP document.

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## CONTRACT REQUIREMENTS

Upon MassCEC's authorization to proceed with the proposal, MassCEC and the awarded applicant(s) will execute a contract, substantially in the form of the template agreement attached hereto as Attachment 1, which will set forth the respective roles and responsibilities of the parties.

## ATTACHMENT 1: SAMPLE AGREEMENT

### **SUBAWARD GRANT AGREEMENT**

This Grant Agreement (the “Agreement”), effective as of [Date – Month DD, YYYY] (the “Effective Date”), is by and between the **Massachusetts Clean Energy Technology Center** (“MassCEC”), an independent public instrumentality of the Commonwealth of Massachusetts (the “Commonwealth”) with a principal office and place of business at 294 Washington Street, Suite 1150, Boston, MA 02108, and [Grantee Name] with a principal office and place of business at [Grantee Address] (“Grantee”). Each of MassCEC and Grantee are at times referred to in this Agreement as a “Party,” and together the “Parties”.

**WHEREAS**, MassCEC was awarded funding by the U.S. Department of Energy Grid Deployment Office under its solicitation regarding Preventing Outages and Enhancing the Resilience of the Electric Grid (the “Federal Award”);

**WHEREAS**, MassCEC conducted a solicitation [insert info];

**WHEREAS** [provide an introduction to the Agreement, why it is being entered into, provide facts about the relationship and goals of the parties, the nature of the contract, and mention other related transactional documents];

**WHEREAS**, [use as many clauses as necessary];

**WHEREAS**, the funding for awarded under this Agreement is a sub-award of the Federal Award, and therefore this Agreement contains flow-down requirements.

**NOW, THEREFORE**, in consideration of the recitals, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, MassCEC and Grantee agree as follows:

#### **1. Performance of the Work**

- a. Grantee shall complete the Project [make sure defined] and provide the deliverables (the “Deliverables”) described in the Scope of Work set forth in Attachment 1 (the “Scope of Work”).
- b. Grantee is solely responsible for all Project decisions, the preparation of all plans and specifications, and completing the Project in accordance with the Scope of Work.
- c. Grantee is solely responsible for selecting and entering into a written contract (or contracts) with contractors as necessary to provide the Deliverables and complete the Scope of Work, and for ensuring that the contractors Grantee retains comply with all applicable provisions of this Agreement. Grantee acknowledges that MassCEC shall have no responsibility for managing such contractors or the relationship between Grantee and its contractors. Further, Grantee shall indemnify and hold harmless MassCEC from any Damages (as defined in Section 14) associated with any disputes occurring between Grantee and its contractors arising from or in relation to the Project.

- d. Grantee acknowledges that MassCEC will have no responsibility for management of the Project, including obtaining all local, state, and federal permits, as applicable, which shall be Grantee's sole responsibility.
- e. Grantee shall be responsible for completing all required steps to receive funding from any other entity besides MassCEC, as applicable.
- f. Grantee agrees to comply with all applicable terms and conditions of the Federal Award, set forth in the Special Terms and Conditions to the Assistance Agreement attached to this Agreement as Attachment 3 (the "Assistance Agreement"). These include regarding, without limitation:
  - i. Cost matching;
  - ii. Compliance with federal, state, and municipal requirements;
  - iii. Acquisition, title, continued use, and disposition of real property, equipment, and supplies;
  - iv. Performance of work in the United States;
  - v. Lobbying restrictions;
  - vi. Prohibition on certain telecommunications and video surveillance services or equipment;
  - vii. Prohibition on foreign government-sponsored talent recruitment programs;
  - viii. Mandatory disclosure requirements pursuant to 2 CFR 200.113;
  - ix. Buy America requirements for infrastructure projects;
  - x. Davis-Bacon Act compliance; and
  - xi. Affirmative action and pay transparency requirements.
- g. During the performance of this Agreement, in accordance with 41 CFR 60-1.3:
  - i. Grantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - ii. Grantee will, in all solicitations or advertisements for employees placed by or on behalf of Grantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - iii. Grantee will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such

other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Grantee's legal duty to furnish information.

- iv. Grantee will send to each labor union or representative of workers with which Grantee has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Grantee's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - v. Grantee will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - vi. Grantee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - vii. In the event of the Grantee's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Grantee may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - viii. Grantee will include the portion of the sentence immediately preceding subsection (i) and the provisions of subsections (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Grantee will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided, however, that in the event Grantee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Grantee may request the United States to enter into such litigation to protect the interests of the United States.*
- h. Grantee shall submit all reports requested by MassCEC in relation to the Project and this Agreement as MassCEC may require for compliance with the Federal Award. Additionally, without limiting the foregoing, Grantee shall provide MassCEC all reporting required pursuant to the Federal Reporting Checklist attached to the Assistance Agreement in the formatting required pursuant thereto.

## 2. Term

The term of this Agreement shall commence on the Effective Date, and shall expire on [Date – Month DD, YYYY] (the "Term") unless otherwise terminated in accordance with Section 8 herein.

### 3. Grant Amount; Payment; Rescission

- a. *Grant Amount.* In consideration of the various obligations to be undertaken by Grantee pursuant to this Agreement, MassCEC agrees to provide Grantee with funds in an amount not to exceed **[write out amount] Dollars (\$numerical amount)** (the “Grant”). The Parties acknowledge and agree that this is a maximum authorization, and MassCEC is under no obligation to transfer the full amount to Grantee, or any amount, in the event Grantee does not satisfy the requirements under this Agreement. Grantee acknowledges and agrees that receipt of this Grant, or any portion of this Grant, does not create any rights of preferences to receive subsequent funding from MassCEC. In no event shall the Grant exceed the amount specified in this section.
- b. *Payment.* MassCEC will pay Grant funds to Grantee in installments in accordance with the Schedule and Deliverable table set forth in Attachment 1 (each installment a “Grant Installment”) within forty-five (45) days of approval of the corresponding Deliverable, receipt of a written invoice describing the work performed with Grant funds during the invoice period, and receipt of a completed and signed Cost Share and Expenditure Certification (Attachment 2). Grantee shall invoice MassCEC by the tenth (10<sup>th</sup>) day following the end of a month for which they are submitting an invoice, and shall clearly indicate on the invoice the assistance listing number of the Federal Award and include detailed accounting costs incurred in accordance with the
- c. *Rescission.* If Grantee materially breaches any term of the Agreement, in addition to the ability to terminate as set forth in Section 8(a), MassCEC shall have the right to rescind Grant payments; *provided*, however, that Grantee shall have the opportunity to cure such breach within thirty (30) days of the breach and if Grantee does so, MassCEC shall not exercise the right to rescind Grant payments. If Grantee becomes insolvent, makes an assignment of rights or property for the benefit of creditors, or files for or has bankruptcy proceedings instituted against it under the federal bankruptcy law of the United States, or if MassCEC reasonably believes that such an event is imminent, MassCEC, acting in its sole discretion, may rescind the remaining undisbursed portion of the Grant.

### 4. Project Managers

- a. MassCEC and Grantee have designated the following persons to serve as Project Managers to support effective communication between MassCEC and Grantee and to report on the Project's progress (the “Project Managers”).

For MassCEC:

[First Name Last Name], ([phone number] / [email]@masscec.com)

[First Name Last Name], ([phone number] / [email]@masscec.com)

For Grantee:

[First Name Last Name], ([phone number] / [email]@)

- b. Grantee shall obtain prior written approval from MassCEC to make any change to its Project Manager. For the avoidance of doubt, MassCEC may update its Project Manager(s) listed without amending this Agreement, if done in compliance with the notice provisions of Section 5.



## 5. Notice

Any notice in this Agreement shall be in writing and shall be sent either by (i) email or other electronic transmission, (ii) courier, or (iii) first class mail, postage prepaid, addressed to the Project Manager listed in Section 4(a) at the address indicated in the preamble of this Agreement (or to such other address as a Party may provide by notice to the Party pursuant to this section), and shall be effective (x) at dispatch, if sent by email or other electronic transmission, (y) if sent by courier, upon receipt as recorded by courier, or (z) if sent by first class mail, five (5) days after its date of posting.

## 6. Publicity; Use of Name

Grantee shall collaborate directly with MassCEC to prepare any public statement, media strategy, or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release or for any news conference in which MassCEC is concerned or discussed, including, but not limited to, any media pitches, interviews, embargoed materials, photo opportunities, blogs, guest columns, media events, or editorial boards which relate to this Agreement or MassCEC (each, a “Public Statement”) and shall in no event be permitted to publish, release, or otherwise disseminate any such Public Statement without MassCEC’s prior written consent.

Grantee agrees that MassCEC shall have the right to make use of and disseminate, in whole or in part, all work products, reports, Deliverables, and other information produced in the course of the Project's completion, and to use the information in such materials contained to produce summaries, case studies, or similar information resources.

## 7. Other Requirements

### a. *Federal Award Identification.*

- i. Subrecipient name:
- ii. Subrecipient unique entity identifier:
- iii. Federal award identification number (FAIN): DE-GD0000022
- iv. Federal award date: August 24, 2023
- v. Subaward period of performance start and end date:
- vi. Subaward budget period start and end date:
- vii. Amount of federal funds obligated to subrecipient, including current financial obligation:
- viii. Total amount of federal award committed to subrecipient:
- ix. Federal Funding Accountability and Transparency Act (FFATA) federal award project description: BIPARTISAN INFRASTRUCTURE LAW (BIL) – PREVENTING OUTAGES AND ENHANCING THE RESILIENCE OF THE ELECTRIC GRID FORMULA GRANTS TO STATES AND INDIAN TRIBES
- x. Federal awarding agency: U.S. Department of Energy
- xi. Contact Information for awarding official of pass-through entity:
- xii. Assistance listing numbers and title: ALN 81.254, Grid Infrastructure Deployment and Resilience
- xiii. R&D Award: Yes
- xiv. Indirect Cost Rate: 10%

- b. *Program Evaluation.* Grantee agrees to support MassCEC’s program evaluation activities, and MassCEC’s dissemination of information regarding Grantee’s experiences. To this end, Grantee agrees that its key personnel and contractors working on the Project will be available at reasonable times with advance notice to be interviewed by MassCEC or its authorized representatives for purposes of program evaluation or case study development.
- c. *Grant Administration.* Grantee shall use the Grant funds only for the activities described in the approved Scope of Work. Grantee shall maintain financial records relating to the receipt and expenditure of all Grant funds in accordance with the terms set forth under this Agreement for a period of seven (7) years starting on the first day after final payment under the Agreement.
- d. *Grant Expenditure.* All costs incurred by Grantee before the Effective Date are incurred voluntarily, at Grantee’s risk and upon its own credit and expense. Grantee shall not incur any costs to be charged against Grant funds prior to the Effective Date.
- e. *Cost Share.* Grantee agrees to meet and maintain a minimum of [one hundred percent (100%)/ one-third (1/3<sup>rd</sup>)] cost share for the Project (“Cost Share”). MassCEC and Grantee will share in any cost savings that result from Project expenses that are less than the amount identified in the Project Budget by maintaining the minimum Cost Share. Grantee agrees and acknowledges that its Cost Share may be cash, documented grants from other parties (such as other state or charitable organizations, but in no event from federal sources unless otherwise allowed by applicable law), or a combination thereof, but that consultants or subcontractors performing work on the Project shall not provide any of the Cost Share.
- f. *Allowable Expenses.* Grantee’s costs uniquely associated with the Project and incurred directly in the completion of Milestones set forth in the Scope of Work and identified in the Project Budget (the “Allowable Expenses”), shall be eligible for Cost Share. For the avoidance of doubt, Allowable Expenses shall not include general administration, overhead, mark-ups, travel (either by Grantee or by subcontractors to Grantee), Grantee’s own labor, or general-purpose facilities, equipment, materials, or software.
- g. *Davis Bacon.* Grantee shall comply with the requires of the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148), including, without limitation, by paying wages to laborers and mechanics, as applicable, at a rate not less than the prevailing wages specified in a wage determination made by the U.S. Secretary of Labor and by paying wages not less than once a week. Grantee must place a copy of such wage determination in any solicitation for such laborers or mechanics. Grantee shall report all suspected or reported violations to MassCEC for subsequent reporting to the DOE. Grantee shall utilize payroll documentation software made available by the DOE to assist compliance with this requirement.
- h. *Anti-Kickback.* Grantee, in accordance with the federal Copeland “Anti-Kickback” Act (40 U.S.C. 3145) is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Grantee shall report all suspected or reported violations to MassCEC for subsequent reporting to the DOE.
- i. *Contract Work Hours and Safety Standards Act.* If Grantee employs mechanics or laborers, Grantee shall be required to compute the wages of every such mechanic and laborer on the basis of a standard work week of 40 hours, in accordance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Work in excess of the standard work week is

permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- j. *Clean Air Act and Federal Water Pollution Control Act.* Grantee shall comply with all applicable standards, orders, or regulations issued to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387) and shall report all violations to the DOE and the applicable Regional Office of the environmental Protection Agency (EPA).
- k. *Debarment and Suspension.* Grantee shall not make any subcontracts with parties listed on the governmentwide exclusions in the System for Award Management (SAM).
- l. *Byrd Anti-Lobbying.* Grantee certifies that it will not and has not used federally appropriated funds to pay any person or organization for the purpose of influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or other award covered by 31 U.S.C. 1352. Further, Grantee shall require that any subcontractor of Grantee or other assignee of Grantee's rights or obligations pursuant to this Agreement shall provide Grantee the same certification Grantee has provided to MassCEC pursuant to this Section 7(k) and provide a copy of such certification to MassCEC.
- m. *Procurement of Recovered Materials.* As applicable, Grantee shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including: (i) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (ii) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (iii) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Further, Grantee shall utilize EPA designated recycled materials in the Project except where they are not commercially available competitively at a reasonable price or do not meet performance standards.
- n. *Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.* Grantee shall not utilize Grant funds to: (i) procure or obtain; (ii) extend or a renew a contract to procure or obtain; or (iii) enter into a contract (or extend or renew a contract) to procure or obtain equipment services, or systems that uses "covered telecommunications equipment" or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and

other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) are prohibited, and telecommunications or video surveillance services provided by such entities or using such equipment is prohibited. Further, procuring telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, is prohibited.

- o. *Domestic Procurement.* As appropriate and to the extent consistent with applicable law, Grantee shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products). For purposes of this Section 7(n):
  - i. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and
  - ii. “Manufactured Products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass (including optical fiber), and lumber.
- p. *Bankruptcy.*
  - i. Grantee shall immediately notify the DOE of the occurrence of any of the following events: (1) Grantee or Grantee’s parent’s filing of a voluntary bankruptcy case seeking liquidation or reorganization under the Bankruptcy Act; (2) Grantee’s consent to the institution of an involuntary case under the Bankruptcy Act against Grantee or its parent; (3) the filing of any similar proceeding for or against Grantee or its parent, or Grantee’s consent to, the dissolution, winding-up or readjustment of Grantee’s debts, appointment of a receiver, conservator, trustee, or other office with similar powers over Grantee, under any other applicable state or federal law; or (4) your insolvency due to Grantee’s inability to pay Grantee’s debts generally as they become due.
  - ii. Such notification from Grantee shall be in writing and shall: (1) specifically set out the details of the occurrence of an event referenced in subsection (1) of this Section 7(o); (2) provide the facts surrounding that event; and (3) provide the impact such event will have on the project being funded by this award.
  - iii. Upon the occurrence of any of the four events described in subsection (1) of this Section 7(o), DOE reserves the right to conduct a review of Grantee’s award to determine compliance with requirements of Grantee’s award (including such items as cost share, progress towards technical project objectives, and submission of required reports).
- q. *Export Control Law Compliance.* Grantee shall comply with all applicable United States Export Control laws and regulations relating to any work performed pursuant to this Agreement, including subcontractor work. Grantee shall immediately notify MassCEC of any violations of this

Section 7(p) upon Grantee's learning of such violation, in no event to exceed ten (10) business days of Grantee's learning of such violation.

- r. *Disclosure of Foreign Connections.* Grantee shall immediately notify MassCEC regarding:
- i. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
  - ii. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
  - iii. Any current or pending change in ownership structure of Grantee that increases foreign ownership related to a country of risk;
  - iv. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
  - v. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
  - vi. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to Grantee.

For purposes of this Section 7(q), "country of risk" refers to Iran, North Korea, Russian, China, and/or any other country designated by DOE during the Term.

- s. *Prohibition of Duplicative Funding.* If Grantee has received or receives any other awards of federal funds for activities that potentially overlap with the Grant awarded under this Agreement, Grantee shall promptly notify MassCEC of the potential overlap and state whether project funds (i.e., cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Agreement. If there are identical cost items, Grantee shall promptly notify MassCEC in writing of the potential duplication and eliminate any inappropriate duplication of funding.
- t. *Intellectual Property Rights.* Grantee acknowledges that intellectual property rights associated with the Project are subject to 2 CFR 200.315 or 2 CFR 910.362, as applicable.
- u. *DOE Conflict of Interest Policy.* Grantee shall comply with the requirements of DOE's interim Conflict Of Interest Policy for Financial Assistance issued December 20, 2021.
- v. *Financing Statements.* If Grantee purchases equipment for the Project and the per-unit dollar value of said equipment is Five Thousand Dollars (\$5,000) or more, Grantee shall prepare a UCC financing statement and submit to MassCEC in order for MassCEC to seek DOE approval prior to Grantee recording the financing statement.
- w. *Audit Report/Financial Statement Audit/Uniform Guidance Audit.* As applicable, Grantee shall provide MassCEC with their audit report, financial statement audit, and federal Uniform Guidance audit as soon as commercially possible upon their completion, as well as a reconciliation statement regarding how MassCEC's payments of Grant funds reconcile to Grantee's Schedule of Federal Awards.

## 8. Termination

- a. MassCEC may terminate this Agreement at any time if Grantee has materially breached any term of the Agreement and fails to cure such breach as provided in Section (c).
- b. MassCEC may terminate this Agreement in the event of loss of availability of sufficient funds for the purposes of this Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate action inconsistent with MassCEC performing its obligations under this Agreement.
- c. Except as otherwise provided in the Agreement, the rights and obligations of each of the Parties under Sections: 5, 6(b), 7(b), 8, 10, 11, 14, 15, 18, 19, 21, 22, 24, 26, and 27 of this Agreement shall survive and remain in effect after the termination or expiration of this Agreement.

## 9. Tax Forms and Grant Taxability

- a. Grantee shall provide MassCEC with a properly completed United States Internal Revenue Service (“IRS”) Form W-9 (the “W-9”). Failure to provide the W-9 shall be grounds for withholding all Grant Installments until such W-9 is received. W-9s shall be emailed to [AP@masscec.com](mailto:AP@masscec.com).
- b. Grants may be considered taxable income by the IRS and the Massachusetts Department of Revenue. Grantee is solely responsible for any failure to timely consult with a tax professional to determine the federal and/or state tax implications of this Agreement. MassCEC will issue an IRS Form 1099 to each Grantee. For all tax-exempt entities (including government entities), a tax-exemption certificate or IRS tax-exemption determination letter must be emailed to [AP@masscec.com](mailto:AP@masscec.com).

## 10. Access and Use

Grantee agrees to license or otherwise make available to MassCEC in perpetuity, without charge, Grantee’s interest in and copyright (if any) to all non-confidential materials prepared and produced in relation to the Project, including, without limitation, all plans, specifications, and analyses developed in connection with the Project and specified as being for MassCEC’s use and public dissemination; *provided, however*, that any and all inventions that are conceived or first reduced to use during the course of the Project shall be the sole property of Grantee (except that if jointly invented, title shall flow in accordance with United States patent law), and any licensing requests for such inventions shall be subject to good faith negotiations between the Parties. Grantee represents and warrants that Deliverables will not infringe on any copyright, right of privacy, or personal or proprietary rights of others.

## 11. Audit

At any time prior to the completion of the Project and as otherwise provided in this section, MassCEC shall have the right to audit Grantee’s or its other agents’ records to confirm the use of the Grant awarded under this Agreement. If such audit reveals that any portion of such funds was used for purposes not permitted under the Agreement (a “Nonconformance Event”), then Grantee shall refund to MassCEC the amount determined by such audit to have been improperly used within thirty (30) days of Grantee’s receipt of such audit and demand. In the event such audit reveals a Nonconformance Event, MassCEC shall be entitled to immediately terminate this Agreement and discontinue disbursing Grant Installments to Grantee from the date the audit is completed, subject to any limitations set forth by Section 8. Grantee shall maintain books, records, and other compilations of data pertaining to the

funds paid pursuant to this Agreement to the extent and in such detail as to properly substantiate use of such payments. All such records shall be kept for a period of seven (7) years, starting on the first day after final payment under the Agreement (the "Retention Period"). If any litigation, claim, negotiation, audit, or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the audit or other action and resolution of all issues resulting from audit or other action, or until the end of the Retention Period, whichever is later. MassCEC or the Commonwealth or any of their duly authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy at reasonable expense, the books, records, and other compilations of data of Grantee which pertain to the provisions and requirements of this Agreement. Such access may include on-site audits, review, and copying of records.

## **12. Assignment and Subcontracting**

Grantee shall not assign or in any way transfer any interest in Grant funds without the prior written consent of MassCEC, nor shall Grantee subcontract any of its obligations hereunder without the prior written consent of MassCEC; *provided, however*, that any subcontract entered into by Grantee pursuant to this Section 12 shall not relieve Grantee from any of its obligations pursuant to this Agreement, any act or omission by a subcontractor of Grantee shall be deemed an act or omission by Grantee, and Grantee shall be responsible for each of its subcontractors complying with all obligations of Grantee pursuant to this Agreement.

## **13. Compliance with Laws**

Grantee agrees to comply with all applicable federal, state, and local statutes, rules, regulations, and permitting requirements, including, but not limited to, all laws promoting fair employment practices or prohibiting employment discrimination and unfair labor practices, and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged, or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits, or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, gender identity, or for exercising any rights afforded by law.

## **14. Indemnification**

a. To the fullest extent permitted by law, Grantee shall indemnify and hold harmless the Commonwealth, MassCEC, and each of their respective agents, officers, directors, and employees (together with the Commonwealth and MassCEC, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs, and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred, or suffered by or imposed upon any Covered Person resulting from (i) any breach of this Agreement or false representation of Grantee, its officers, directors, employees, agents, subcontractors, or assigns under this Agreement, or (ii) any negligent acts or omissions or reckless misconduct of Grantee, its officers, directors, employees, agents, subcontractors, or assigns. Without limiting the foregoing, Grantee shall indemnify and hold harmless each Covered Person against any and all Damages that may arise out of or are imposed due to the failure to comply with the provisions of applicable law by Grantee or any of its agents, officers, directors, employees, subcontractors, or assigns.

b. In no event shall either Party be liable for any indirect, incidental, special, punitive, or consequential damages whatsoever (including, but not limited to, lost profits or interruption of business) arising out of or related to Grantee's, its officers, directors, employees, agents, subcontractors, or assigns' performance of the Project under this Agreement, regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise.

c. MassCEC shall indemnify the United States Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

### **15. Public Records and CTHRU**

As a public entity, MassCEC is subject to the Commonwealth's Public Records Law, codified at M.G.L. c. 66. Thus, any documentary material, data, or other information received by MassCEC from an applicant is a public record subject to disclosure. Grantee acknowledges and agrees that MassCEC, in its sole discretion, shall determine whether any particular document, material, data, or other information is exempt from or subject to public disclosure. Grantee agrees and acknowledges that it shall not send MassCEC any confidential or sensitive information under this Agreement.

Grantee agrees and acknowledges that MassCEC shall have the right to disclose the name of Grantee and/or payee, the amount of the payment pursuant to this Agreement, and any other information it may deem reasonably necessary on CTHRU, the Commonwealth's online database of state spending, or any other applicable state spending website.

### **16. Insurance**

Grantee certifies that appropriate insurance coverage for all activities under this Agreement has been obtained and shall be maintained in effect through the Term of this Agreement. GRANTEE ACKNOWLEDGES THE SUFFICIENCY OF THE TYPES AND AMOUNTS OF INSURANCE COVERAGE MAINTAINED AND THE APPROPRIATENESS OF THOSE COVERAGES FOR THE DURATION OF THE TERM. At MassCEC's request, Grantee will provide MassCEC with copies of the certificates of insurance evidencing such coverage. The insurance requirements for the Project and pursuant to this Agreement are solely Grantee's responsibility and shall not relieve Grantee of any responsibility to MassCEC.

### **17. Conflict of Interest**

Grantee acknowledges that all MassCEC employees are subject to the Commonwealth's Conflict of Interest statute, codified at M.G.L. c. 268A.

### **18. Lobbying**

No funds awarded by this Agreement may be used to pay for or otherwise support any activities intended to influence any matter pending before the Massachusetts General Court or for activities covered by the law and regulations governing "legislative agents" or "executive agents" set forth in the Commonwealth's Lobbying Law, codified at M.G.L. c. 3, Section 39.



## **19. Choice of Law and Forum; Arbitration; Equitable Relief**

a. This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to its conflict of laws principles. Any dispute arising out of or relating to this Agreement or its breach, termination, or invalidity, whether before or after termination of this Agreement, if not resolved by negotiation among the Parties within thirty (30) days after such dispute is raised by either Party in writing, will be settled by binding arbitration by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over this Agreement. Any such arbitration will be conducted in or near Boston, Massachusetts. The prevailing Party shall be entitled to receive from the other Party its reasonable attorney's fees and costs incurred in connection with any action, proceeding, or arbitration under this subsection.

b. This section shall not be construed to limit any other legal rights of the Parties. Each Party acknowledges and agrees that any breach or threatened breach of this Agreement by the other Party may result in substantial, continuing, and irreparable damage to the first Party. Therefore, before or during any arbitration, either Party may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction, where such relief is necessary to protect its interests pending completion of the arbitration proceedings.

## **20. Registration**

Grantee represents and warrants that Grantee is or will become registered and maintain good standing with the Secretary of State's Office of the Commonwealth of Massachusetts for the duration of the Term.

## **21. Severability**

Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power, or enforceability of any other clause or provision of this Agreement.

## **22. Amendments and Waivers**

MassCEC may amend Section 15 (without any action by Grantee) to reflect changes in law or MassCEC policies and shall promptly deliver any and all such amendments to Grantee in the manner provided in Section 5. Except as provided in the immediately preceding sentence, no amendments to or modifications of this Agreement, and no waiver of any provision of this Agreement, shall be effective unless the same shall be in writing and shall be signed by each of the Parties. Any waiver by MassCEC of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or indulgence in any form or manner by a Party shall not be construed as a waiver, or in any way limit the remedies available to that Party.

## **23. Force Majeure**

Neither Party shall be liable or responsible to the other Party, nor be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted

Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure "vents"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) actions, embargoes, or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; and (f) strikes, labor stoppages or slowdowns. The Impacted Party shall give notice within two (2) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ten (10) days following written notice given by it under this Section, the other Party may thereafter terminate this Agreement upon fifteen (15) days' written notice.

#### **24. Independent Status**

Nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, partner, joint venturer, or principal and agent between MassCEC and Grantee, its officers, directors, employees, agents, or assigns.

#### **25. Counterparts**

This Agreement may be executed in two (2) or more counterparts, and by the Parties on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

#### **26. Headings; Interpretation**

The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. For purposes of this Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references in this Agreement: (x) to sections, subsections, schedules, and exhibits mean the sections of, the subsections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions of such agreement, instrument, or other document; and (z) to a statute means such statute as amended from time to time and includes any successor legislation to such statute and any regulations promulgated under such statute. Whenever the singular is used in this Agreement, the same shall include the plural, and whenever the plural is used in this Agreement, the same shall include the singular, where appropriate. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective legal counsel.

## **27. Binding Effect; Entire Agreement**

This Agreement shall be binding on the Parties and their respective successors and permitted assigns, and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person shall be regarded as a third party beneficiary of this Agreement. This Agreement embodies the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant, or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change, or restrict, the express terms and provisions of this Agreement. Furthermore, neither Grantee's nor any of its subcontractors' provision of services under this Agreement implies, establishes or otherwise creates any rights or expectations of additional contracts with the MassCEC, whether related or unrelated to the subject matter of this Agreement. The following (together with all exhibits, schedules, and attachments) are hereby incorporated into this Agreement by reference:

- a. Attachment 1—Scope of Work
- b. Attachment 2 – Cost Share and Expenditure Certification
- c. Attachment 3 – Assistance Agreement

*[Remainder of Page Intentionally Blank]*

In witness whereof, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the Effective Date.

**Massachusetts Clean Energy Technology Center**

**[Grantee's full legal entity name]**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Federal Tax ID No.:** \_\_\_\_\_

DRAFT

**Attachment 1**  
**SCOPE OF WORK: Project Plan, Deliverables, and Schedule**

- I. Project Plan [provide a description of the project]
- II. Payment Terms [describe payment terms and the invoicing process. Make sure this section is consistent with the terms of Section 3]
- III. Schedule and Deliverables

**EXAMPLE TABLE**

<b>Task Number</b>	<b>Task Description</b>	<b>Milestone/Deliverable</b>	<b>Completion Date</b>	<b>Payment Amount</b>
1				
2				
3				
	<b>TOTAL</b>			\$

MassCEC shall have the right at its sole discretion to allow for additional time for the completion of Milestones/Deliverables without need to amend this Agreement. If Grantee cannot satisfy a Completion Date, it shall seek MassCEC’s prior written approval, email acceptable, of a later Completion Date and provide reasoning for its request. MassCEC shall approve or deny Grantee’s request, email acceptable, within a reasonable time period.

Attachment 2— [IF APPLICABLE: Cost Share and] Expenditure Certification

For submission with Grantee’s invoice

Grantee Contact and Project Financing Information	
Project Title	
Grantee Contact Name, Title	
Company/Organization	
Milestone # and Name	
Grant Installment Amount Requested	
<b>IF APPLICABLE: Grantee Cost Share Amount for Milestone</b>	<b>[DELETE THESE 4 CELLS IF NO COST SHARE]</b>
<b>IF APPLICABLE: Cost Share Source(s)</b>	<i>I.e. Investors, in-kind, labor, cash, etc. Please include names of entities contributing to each type of cost share, amounts for each</i>

This [IF APPLICABLE: Cost Share and] Expenditure Certification is subject to the Agreement, by and between Grantee and MassCEC. By signing below, the undersigned certifies that:

1. They are authorized to sign on behalf of Grantee;
2. MassCEC, pursuant to Section 11 of the Agreement, has the right to audit records to confirm the use of funds is consistent with the Grant requirements and may do so at any time in compliance with the terms of the Agreement; and
3. Grantee has used and/or will use all Grant funds for the Project.

By: \_\_\_\_\_

(Signature of Authorized Representative)

Name \_\_\_\_\_

Title \_\_\_\_\_


Date \_\_\_\_\_

**Attachment 3 – Assistance Agreement**

(See Attached)

DRAFT

**ASSISTANCE AGREEMENT**

1. Award No. DE-GD0000022		2. Modification No.	3. Effective Date 08/24/2023	4. CFDA No. 81.254
5. Awarded To MASSACHUSETTS CLEAN ENERGY CENTER Attn: Rees Sweeney-Taylor 294 WASHINGTON ST STE 1150 BOSTON MA 021084626		6. Sponsoring Office Grid Deployment Office (GD) U.S. Department of Energy 1000 Independence Avenue, SW Forrestal Building , GD-1 Washington DC 20585		7. Period of Performance 08/24/2023 through 04/30/2028
8. Type of Agreement <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Other	9. Authority See Page 2		10. Purchase Request or Funding Document No. 23GD000140	
11. Remittance Address MASSACHUSETTS CLEAN ENERGY CENTER Attn: Rees Sweeney-Taylor 294 Washington Street Suite 1150 BOSTON MA 02108		12. Total Amount Govt. Share: \$9,209,845.00  Cost Share : \$1,381,477.00  Total : \$10,591,322.00		13. Funds Obligated This action: \$9,209,845.00  Total : \$9,209,845.00
14. Principal Investigator	15. Program Manager Joshua T. Metz Phone: 3048909423		16. Administrator U.S. DOE/NETL NATIONAL ENERGY TECH LAB 3610 Collins Ferry Road Morgantown WV 26505-2353	
17. Submit Payment Requests To Payment - Direct Payment from U.S. Dept of Treasury		18. Paying Office Payment - Direct Payment from U.S. Dept of Treasury		19. Submit Reports To See Attachment 3
20. Accounting and Appropriation Data See Schedule				
21. Research Title and/or Description of Project BIPARTISAN INFRASTRUCTURE LAW (BIL) - PREVENTING OUTAGES AND ENHANCING THE RESILIENCE OF THE ELECTRIC GRID FORMULA GRANTS TO STATES AND INDIAN TRIBES				
For the Recipient			For the United States of America	
22. Signature of Person Authorized to Sign			25. Signature of Grants/Agreements Officer 	
23. Name and Title	24. Date Signed	26. Name of Officer Jodi L. Collins		27. Date Signed 08/24/2023



**CONTINUATION SHEET**

REFERENCE NO. OF DOCUMENT BEING CONTINUED  
DE-GD0000022

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2 | 29

NAME OF OFFEROR OR CONTRACTOR  
MASSACHUSETTS CLEAN ENERGY CENTER

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>UEI: TH2QFQCWF2Z9</p> <p>Project Period of Performance: 08/24/2023 - 04/30/2028</p> <p>Budget Period: 08/24/2023 - 04/30/2028</p> <p>Block 9 Authority: Infrastructure Investment and Jobs Act of 2021, Section 40101(d), 42 U.S.C. § 18711(d) (2023).</p> <p>Block 14. Principal Investigator: Rees Sweeney-Taylor grid@masscec.com 617-315-9391</p> <p>Recipient Business Point of Contact: Galen Nelson GNelson@masscec.com 617-315-9375</p> <p>Block 15. DOE Program Manager: Joshua Metz joshua.metz@netl.doe.gov 304-285-5242</p> <p>DOE Award Administrator: Michelle Leaton Michelle.Leaton@netl.doe.gov 412-386-9456</p> <p>ASAP: YES Extent Competed: NOT COMPETED Davis-Bacon Act: YES PI: Rees Sweeney-Taylor</p>				



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**SPECIAL TERMS AND CONDITIONS FOR USE IN FORMULA GRANTS ISSUED UNDER THE  
GRID DEPLOYMENT OFFICE (GDO) ADMINISTRATIVE AND LEGAL REQUIREMENTS DOCUMENT  
(ALRD)**

**LEGAL AUTHORITY AND EFFECT (JUNE 2015)**

- (a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.
- (b) Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

**RESOLUTION OF CONFLICTING CONDITIONS**

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

**AWARD AGREEMENT TERMS AND CONDITIONS (DECEMBER 2014) (NETL – MARCH 2023)**

This award/agreement consists of the Assistance Agreement cover page, plus the following:

- a. Special terms and conditions.  
b. Attachments:

Attachment No.	Title
1	Intellectual Property Provisions
2	Statement of Project Objectives
3	Federal Assistance Reporting Checklist

- c. Applicable program regulations: NONE
- d. DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at <http://www.eCFR.gov>.
- e. Research Terms and Conditions and the DOE Agency Specific Requirements at <http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp> (if the Award is for research and the Award is to a university or non-profit).
- f. Application/proposal as approved by DOE.
- g. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at <https://www.nsf.gov/awards/managing/rtc.jsp>.
- h. Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL)

**FLOW DOWN REQUIREMENT**

The Recipient agrees to apply the terms and conditions of this Award, as applicable, including the Intellectual Property Provisions, to all subrecipients (and subcontractors, as appropriate), as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all subrecipients (and subcontractors, as appropriate), and to require their strict compliance therewith.

**CONFERENCE SPENDING (FEBRUARY 2015)**

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.

**PAYMENT PROCEDURES - REIMBURSEMENT THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM**

- a. Method of Payment. Payment will be made by reimbursement through the Department of Treasury's ASAP system.
- b. Requesting Reimbursement. Requests for reimbursements must be made through the ASAP system. Your requests for reimbursement should coincide with your normal billing pattern, but not more frequently than every two weeks. Each request must be limited to the amount of disbursements made for the federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.
- c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.
- d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

**COST MATCH**

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

Each Recipient is required to match 15 percent of their allocation. In addition, eligible entities performing resilience projects are required to provide a 100 percent cost match, unless the eligible entity sells not more than 4,000,000 megawatt hours of electricity per year, then the eligible entity is required to provide a one-third cost match.

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

- b. If the Recipient discovers that you may be unable to provide the required cost matching under this award, the Recipient should immediately provide written notification to the DOE Award Administrator indicating whether the Recipient will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost matching will be secured.
- c. The Recipient must maintain records of all project costs that you claim as cost match, including in-kind costs, as well as records of costs to be paid by DOE/NNSA. Such records are subject to audit.
- d. Failure to provide the cost matching required by this term may result in the subsequent recovery by DOE of some or all the funds provided under the award.

## **REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS**

- a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.
- b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

## **USE OF PROGRAM INCOME - ADDITION**

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

## **POST-AWARD DUE DILIGENCE REVIEWS (MARCH 2023)**

During the life of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

## **ANNUAL ALLOCATION REQUEST**

The Recipient shall submit their annual allocation request in accordance with the instructions provided in the Reporting Requirements Checklist attached to this award. The Annual Allocation Request must be submitted to the DOE Program Manager whose name is in Block 15 of the Award Agreement and the DOE Award Administrator whose name is identified on Page 2 of the Assistance Agreement cover page.

The Annual Allocation Request must include the following information:

- SF 424 reflecting the current year allocation and cost match amounts.
- Cost Match Information for current year allocation.
  - Cost Match Value
  - Identify the source/organization of the proposed cost match.
  - Type of Cost Match (cash or in-kind)
  - Provide a description of their proposed cost match.
- Program Narrative – copy of current Program Narrative if there are no changes or an updated Program Narrative to reflect any changes. If changes have occurred, a Public Notice and Hearing must be documented in the updated Program Narrative.

## **RESILIENCE PROJECT AND SUBAWARD/SUBCONTRACT NOTIFICATION**

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

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

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

- (a) Recipient confirms that the subawardee:
- (i) is an eligible entity type identified in BIL section 40101(a)(2);
  - (ii) is a domestic entity; 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;
  - (iii) is not a debarred or a suspended entity; and
  - (iv) will pay all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 on projects funded directly by or assisted in whole or in part by and through funding under the award, wages at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 1 of Title 40, United State Code commonly referred to as the “Davis-Bacon Act” (DBA).
- (b) Recipient confirms that:
- (i) the process undertaken to solicit the subaward/subcontract complies with their written procurement procedures as outlined in 2 CFR 200.318;
  - (ii) the proposed work to be done is an eligible activity identified in BIL Section 40101(e)(1);
  - (iii) the proposed subaward effort is consistent with the Program Narrative being executed under the award;
  - (iv) the primary purpose of the proposed project is not cyber security but that the implementation of the proposed project will adhere to any applicable cybersecurity requirements, and where possible, best practices in deploying technologies under their subaward;
  - (v) no planned, actual or apparent conflict of interest exists between the Recipient and the selected subawardee/subcontractor and that the Recipient’s written standards of conduct were followed;
  - (vi) as applicable, subaward/subcontracts address the Small Utilities Set Aside requirement set forth in BIL Section 40101(d)(6); and
  - (vii) all required award provisions will be flowed down in the resulting subaward/subcontract.
- (c) Recipient provides:
- (i) SF-424A Budget Information form and Budget Justification form for all resilience project subawards; and any other subaward over \$250,000;
  - (ii) a completed Environmental Questionnaire covering the subaward activity;
  - (iii) cost match commitment letter from the eligible entity committing to meet the cost matching as required in BIL Section 40101(h);
  - (iv) the proposed metrics that will be collected and reported in the Quarterly Progress Report to measure and demonstrate the beneficial impact of the resilience project on the resilience of the grid and to the community served;
  - (v) listing of Foreign Nationals for subrecipients/eligible entities and technical assistance contractors in accordance with the Foreign National Participation – Approval term;
  - (vi) Performance of Work in the United States waiver (if applicable);
  - (vii) Buy America for Infrastructure Projects waiver (if applicable);
  - (viii) Domestic entity waiver for subrecipients (if applicable); and
  - (ix) a summary/brief description of any application, similar in nature, submitted by the proposed subawardee to the DOE under BIL Section 40101(c), DE-FOA-0002740, Grid Resilience and Innovation Partnerships (GRIP).



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

## **REPORTING**

Reporting requirements are identified on the Federal Assistance Reporting Checklist and Instructions, DOE F 4600.2, attached to the award agreement. Additional reporting requirements apply to projects funded by BIL. As part of tracking progress toward key Departmental goals – ensuring justice and equity, creating jobs, boosting domestic manufacturing, reducing greenhouse gas emissions, and advancing a pathway to private sector – DOE may require specific data collection. Examples of data that may be collected include:

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

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

## **FOREIGN NATIONAL PARTICIPATION – APPROVAL REQUIRED (MARCH 2023)**

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

Approval for foreign nationals in Principal Investigator/Co-Principal Investigator roles, from countries of risk (i.e., China, Iran, North Korea, and Russia), and from countries identified on the U.S. Department of State’s list of State Sponsors of Terrorism (<https://www.state.gov/state-sponsors-of-terrorism/>) must be obtained from DOE before they can participate in the performance of any work under this award.

A “foreign national” is defined as any person who is not a United States citizen by birth or naturalization. DOE may elect to deny a foreign national’s participation in the award. Likewise, DOE may elect to deny a foreign national’s access to a DOE sites, information, technologies, equipment, programs, or personnel.

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

## **STATEMENT OF FEDERAL STEWARDSHIP**

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

**SITE VISITS**

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

**CATEGORICAL EXCLUSION (CX) – Initial Application**

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of federal funds. Based on the initial information provided by the Recipient, DOE has made a NEPA determination by issuing a CX, thereby **authorizing use of funds for technical assistance and administrative project activities only**.

NEPA review and approval of proposed resilience project activities are required as per the Resilience Project and Subaward/Subcontract Notification Term. If any of the proposed projects are likely to require an Environmental Assessment (EA) or Environmental Impact Statement (EIS), the DOE NEPA Compliance Officer will provide further guidance. Should the recipient elect to undertake activities prior to authorization from the DOE, the Recipient is doing so at risk and such costs may not be authorized and recognized as allowable cost.

**FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

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

**ELIGIBLE ENTITY PRIORITIZATION – 40101(d)(5)**

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

**SMALL UTILITIES SET ASIDE – 40101(d)(6)**

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

**TECHNICAL ASSISTANCE AND ADMINISTRATIVE EXPENSES – 40101(d)(7)**

Of the amounts made available to the Recipient under the program each fiscal year, the Recipient may use not more than 5 percent for technical assistance (*see* BIL Section 40101(g)(1)(A)) and administrative expenses associated with the program.

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

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

**INSURANCE COVERAGE (DECEMBER 2014)**

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

**REAL PROPERTY – GRID RESILIENCE**

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

**EQUIPMENT (DECEMBER 2014)**

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

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR Part 200.313 before disposing of the property.

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

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

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

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity.

Disposition will be made as follows: (a) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency; (b) Non-Federal entity may retain title or sell the equipment after compensating the Federal awarding agency as described in 2 CFR Part 200.313(e)(2); or (c) transfer title to the Federal awarding agency or to an eligible third Party as specified in CFR Part 200.313(e)(3).

See 2 CFR Part 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR Part 200.439 Equipment and other capital expenditures.

See 2 CFR Part 910.360 for amended requirements for Equipment for For-Profit recipients.

**SUPPLIES (DECEMBER 2014)**

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

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

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

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

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

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

When the property is no longer needed for authorized project purposes, the Recipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310-200.316.

#### **PROPERTY TRUST RELATIONSHIP (DECEMBER 2014)**

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

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

#### **INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP**

**The Recipient must include the insolvency, bankruptcy or receivership term in any for-profit/non-profit sub-award(s), at any tier.**

- a. You shall immediately notify the DOE of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.
- b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.
- c. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines

that there are significant deficiencies or concerns with your performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.

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

## **PERFORMANCE OF WORK IN UNITED STATES**

The Recipient agrees that at least **100%** of the direct labor cost for the project (including subrecipient labor) shall be incurred in the United States, unless the Recipient can demonstrate to the satisfaction of the DOE that the United States economic interest will be better served through a greater percentage of the work being performed outside the United States.

## **REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION**

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$30,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if

i. the total Federal funding authorized to date under this award is \$30,000 or more;

ii. in the preceding fiscal year, you received;

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <http://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if;

- i. in the subrecipient's preceding fiscal year, the subrecipient received;

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year ( i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards,

and

- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;

- ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization;
  - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_ .210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
- i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax-qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

#### **SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS**

A. Requirement for System for Award Management (SAM) Unless exempted from this requirement under 2 CFR 25.110, the prime recipient must remain registered and maintain current information in SAM for the entire period of performance

of the award. This includes providing information on the prime recipient's immediate and highest level owner and subsidiaries, as well as on all of its predecessors that have been awarded a Federal contract or Federal financial assistance agreements within the last three years, if applicable, until the prime recipient submits the final financial report required under this award or receives the final payment, whichever is later. This requires the prime recipient to review its information in SAM at least annually after the initial registration, and to update its information as soon as there are changes. Reviews and updates may be required more frequently due to changes in recipient information or as required by another award term.

#### B. Requirement for Unique Entity Identifier

If authorized to make subawards under this award, the prime recipient:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward until the entity has provided its unique entity identifier to the prime recipient.

2. Must not make a subaward to an entity unless the entity has provided its unique entity identifier to the prime recipient. Subrecipients are not required to obtain an active SAM registration, but must obtain a unique entity identifier.

#### C. Definitions

For purposes of this term:

1. System for Award Management (SAM) means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at <https://www.sam.gov>).

2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

3. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following for purposes of this part:

- a. A foreign organization;
- b. A foreign public entity;
- c. A domestic for-profit organization; and
- d. A Federal agency.

4. Subaward has the meaning given in 2 CFR 200.1.

5. Subrecipient has the meaning given in 2 CFR 200.1.

#### **FINAL INCURRED COST AUDIT (DECEMBER 2014)**

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

#### **INDEMNITY**



The Recipient must include the following indemnity provision in any sub-awards to eligible entities performing the resilience projects at any tier:

The **Massachusetts Clean Energy Center** shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

#### **LOBBYING RESTRICTIONS (MARCH 2012)**

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

#### **CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES (MARCH 2014)**

By entering into this agreement, the undersigned attests that Massachusetts Clean Energy Center has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

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

For purposes of these assurances, the following definitions apply:

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

#### **NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUNE 2015)**

(1) By entering into this agreement, the undersigned attests that Massachusetts Clean Energy Center does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The undersigned further attests that does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

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

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

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

## **REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (DECEMBER 2015)**

### **a. General Reporting Requirement**

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

### **b. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

2. Reached its final disposition during the most recent five year period; and

3. Is one of the following:

(A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(C) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(D) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part;  
and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

#### c. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

#### d. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

#### e. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or A. Reporting of Matters Related to Recipient Integrity and Performance.
2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - (A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - (B) The value of all expected funding increments under a Federal award and options, even if not yet

#### **EXPORT CONTROL (MARCH 2023)**

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

The Recipient must immediately report to DOE any export control violations related to the project funded under this award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

#### **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (MARCH 2023)**

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

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

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

### **A. Prohibition**

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

### **B. Definitions**

1. **Foreign Government-Sponsored Talent Recruitment Program.** An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent

recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

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

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

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

### **INTERIM CONFLICT OF INTEREST REQUIREMENTS FOR FINANCIAL ASSISTANCE (MARCH 2023)**

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term “Investigator” means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities, with the exception of DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports.

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

### **FRAUD, WASTE AND ABUSE (MARCH 2023)**

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

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

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

### **TRANSPARENCY OF FOREIGN CONNECTIONS (MARCH 2023)**

During the term of the Award, the Recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the Recipient or subrecipients:

1. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the Recipient or subrecipients that increases foreign ownership related to a country of risk;
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Recipient or subrecipient.

### **FOREIGN COLLABORATION CONSIDERATIONS (MARCH 2023)**

- A. Consideration of new collaborations with foreign organizations and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- B. Existing collaborations with foreign entities, organizations and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.
- C. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the 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 Award but resulting in provision of a thing of value from or to the 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.

## BUY AMERICAN REQUIREMENTS FOR INFRASTRUCTURE PROJECTS (MARCH 2023)

### A. Definitions

**Components** are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

**Construction Materials** are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

**Domestic Content Procurement Preference Requirement-** means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

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

Also referred to as the Buy America Requirement.

**Infrastructure** includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy -including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

**Manufactured Products** are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

**Primarily of iron or steel** means greater than 50% iron or steel, measured by cost.

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

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

### B. Buy America Requirement

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

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

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

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

### **C. Certification of Compliance**

The Recipient must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.

The Recipient must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the Recipient. The Recipient must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

### **D. Waivers**

When necessary, the Recipient may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:



1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential to the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The Recipient should consider using the following principles as minimum requirements contained in their waiver request:

- Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
- Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- Conditional: The Recipient may request a waiver with specific conditions that support the policies of IJA/BABA and Executive Order 14017.

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

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

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

### **DAVIS-BACON REQUIREMENTS (MARCH 2023)**

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2000 on projects funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

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

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
- (2) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- (5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.
- (6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.
- (7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.
- (8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or

subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system. The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

The Department of Energy has contracted with, a third-party DBA electronic payroll compliance software application. The Recipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software.

#### Davis Bacon Act Electronic Certified Payroll Submission Waiver

A waiver must be granted before the award starts. The applicant does not have the right to appeal DOE's decision concerning a waiver request.

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

### **AFFIRMATIVE ACTION AND PAY TRANSPARENCY REQUIREMENTS (MARCH 2023)**

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

- (1) Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients and Contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
- (3) Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

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

For construction projects valued at \$35 million or more and lasting more than one year, Recipients, contractors, or subcontractors may be selected by OFCCP as a mega construction project. If selected, DOE, under relevant legal authorities including Sections 205 and 303(a) of Executive Order 11246, will require participation as a condition of the

award. This program offers extensive compliance assistance with EO 11246. For more information regarding this program, see <https://www.dol.gov/agencies/ofccp/construction/mega-program>.

**POTENTIALLY DUPLICATIVE FUNDING NOTICE (MARCH 2023)**

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

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<sup>1</sup> See OFCCP's Technical Assistance Guide at:

<https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec>. Also see the National Policy Assurances <http://www.nsf.gov/awards/managing/rtc.jsp>.