

EXHIBIT Z

FEDERAL AWARD TERMS AND CONDITIONS

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Subpart A. Award Specific Provisions

1. Purpose

The purpose of this exhibit is to provide the federal terms and conditions for California Energy Commission’s (CEC) Award to Subrecipient under this Agreement. This Award is made pursuant to the Section 40101 (d) Formula Grant or Community Energy Reliability and Resilience Investment program (Program) as authorized under Section 40101(d) of the Bipartisan Infrastructure Law.

2. Summary of Award

Name of Federal awarding agency	U.S. Department of Energy or DOE
Name of Recipient /pass-through entity, and contact information for awarding official of the Recipient	California Energy Commission or CEC
Name of Subrecipient	
Subrecipient’s unique entity identifier (DUNS)	
Federal award identification number (FAIN)	
Federal Award Date of award to the Recipient by the Federal agency	
Subaward period of performance start and end date	
Amount of Federal funds obligated by this action by the pass-through entity to the Subrecipient	
Total amount of Federal funds obligated to the Subrecipient by the pass-through entity including the current obligation	
Total amount of the Federal award committed to the Subrecipient by the pass-through entity	
Federal award description as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	
Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;	
Identification of whether the award is research and development (R&D)	
Indirect cost rate for Federal award (including if the application of the de minimis rate per §200.414 Indirect (F&A) costs)	[refer to Sub’s grant application]

3. Resolution of Conflicting terms

In the event of any conflict in the terms of this Agreement, this Exhibit will take precedence.

4. Documents Incorporated by Reference

The following documents are hereby incorporated by reference:

- a. Award Agreement between the U.S. Department of Energy (DOE) and CEC, Award No. DE-GD0000005 (DOE Award).
- b. Public Law 117-58, Bipartisan Infrastructure Law (BIL).
- c. [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200 as amended by 2 CFR part 910](http://www.eCFR.gov), located at <http://www.eCFR.gov>.
- d. [The Funding Opportunity Announcement \(FOA\) for this Program](https://www.fedconnect.net/FedConnect/default.aspx?ReturnUrl=%2ffedconnect%2f%3fdoc%3dDE-FOA-0002736%26agency%3dDOE&doc=DE-FOA-0002736&agency=DOE), located at <https://www.fedconnect.net/FedConnect/default.aspx?ReturnUrl=%2ffedconnect%2f%3fdoc%3dDE-FOA-0002736%26agency%3dDOE&doc=DE-FOA-0002736&agency=DOE>.
- e. [The standard DOE financial assistance intellectual property provisions applicable to various types of recipients](https://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards), located at: <https://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>.
- f. [The National Policy Assurances](http://www.nsf.gov/awards/managing/rtc.jsp), located at: <http://www.nsf.gov/awards/managing/rtc.jsp> and <https://www.energy.gov/management/articles/national-policy-assurances-be-incorporated-award-terms>.
- g. [Research Terms and Conditions and the DOE Agency Specific Requirements](http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp) 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).
- h. The CEC Agency Specific Requirements at (add link).

5. Funding Restrictions

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

6. Flow Down Requirements

- a. Subrecipient must require inclusion in all lower tier subrecipient or subcontract agreements, all federal award terms and conditions in 2 CFR part 200 as amended by 2 CFR part 910 as set forth in 2 CFR 200.101 and ensure strict compliance.
- b. Subrecipient must require inclusion in all lower tier subrecipient or subcontract agreements all applicable Intellectual Property provisions and National Policy Assurances incorporated by reference in Subpart A.3.
- c. Subrecipient must require inclusion in all lower tier subrecipient or subcontract agreements, all other requirements as applicable in this Exhibit or elsewhere in the Agreement.

7. Reporting Requirements

- a. The federal reporting requirements are described in the Federal Assistance Reporting

Checklist, Attachment 3 of the DOE Award.

- b. CEC's noncompliance with reporting requirements may result in withholding of future payments, suspension, or termination of the Award, and withholding of future federal awards.
- c. Subrecipient must assist CEC with meeting all federal reporting requirements by maintaining sufficient records to substantiate the required information and, upon request by CEC or DOE, provide information for reporting purposes within the timeframe requested. Failure to by Subrecipient to comply with this requirement is a material breach of this Agreement.

8. **Stewardship**

The DOE, National Nuclear Security Administration (NNSA) and the CEC will exercise normal stewardship in overseeing the project activities performed under this federal grant agreement. Stewardship Activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing assistance and/or temporary intervention in unusual circumstances to correct deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

9. **Site Visits**

The CEC, DOE and 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. The Subrecipient must provide, and must require its lower tier subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the United States Government and CEC 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.

10. **Audits**

- a. Subrecipient and its lower tier subrecipients, contractors, and subcontractors must provide any information, documents, site access, or other assistance requested by DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to records of the Subrecipient and its lower tier subrecipients, contractors, and subcontractors relating to this Agreement.
- b. Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the financial records or administrative records of the Subrecipient and its lower tier subrecipients, contractors, and subcontractors relating to this Award at any time. Government-initiated audits are generally paid for by DOE.
- c. DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Subrecipient and its lower tier subrecipients, contractors, and subcontractors are required to refund to DOE any payments for costs that were determined to be unallowable. 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.

11. **Refund Obligation**

Subrecipient must refund any excess payments, received from CEC, including any interest.

12. Foreign Travel

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

13. Program Income

If the Subrecipient earns program income during the project period as a result of this Agreement, Subrecipient must add the program income to the funds committed to this Agreement and use it to further eligible project objectives.

14. National Environmental Policy Act (NEPA)

- a. DOE's decision whether and how to distribute federal funds under this Award is subject to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, et seq.). NEPA requires federal agencies to integrate environmental values into their decision-making processes by considering the potential environmental impacts of their proposed actions. For additional background on NEPA, please see [DOE's NEPA website](http://nepa.energy.gov/), located at <http://nepa.energy.gov/>.
- b. The Subrecipient will be required to submit an environmental questionnaire (NETL Form 451.1-1/3) for each of its proposed work locations. A NEPA representative will review these documents and any other pertinent information to determine the likely level of NEPA documentation required for qualified projects. Computer modeling, data analysis and classroom training are examples of actions typically covered by NEPA categorical exclusions (CX's). If any projects are likely to require an environmental assessment (EA) or environmental impact statement (EIS), the NEPA representative will provide further documentation.
- c. While NEPA compliance is a federal agency responsibility and the ultimate decisions remain with the federal agency, the Subrecipient will be required to assist in the timely and effective completion of the NEPA process in the manner most pertinent to their proposed project. If CEC or DOE determines certain records must be prepared to complete the NEPA review process (e.g., biological evaluations or environmental assessments), the Subrecipient may be required to prepare the records and the costs to prepare the necessary records may be included as part of the project costs. As required, Subrecipient must provide to CEC, which will in turn provide to DOE, documentation necessary for NEPA compliance.
- d. Should the Subrecipient elect to undertake activities prior to authorization from the DOE, the Subrecipient does so at risk and such costs may not be authorized and recognized as allowable cost.

15. Historic Preservation

[Reserved for now – delete if not needed]

16. Intellectual Property

- a. Intellectual property rights are subject to 2 CFR 200.315 (e.g. institution of higher education or nonprofit organizations) or 2 CFR 910.362 (e.g., for-profit).
- b. Rights in Technical Data: Normally, the government has unlimited rights in technical data created under a DOE agreement. Delivery or third-party licensing of proprietary software or data developed solely at private expense will not normally be required except as specifically negotiated in a particular agreement to satisfy DOE's own needs or to ensure the commercialization of technology developed under a DOE agreement.

17. Post-Award Due Diligence Review

During the life of the Award, DOE may conduct ongoing due diligence reviews, through United States 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.

18. Construction

Subrecipient must obtain written authorization from CEC and the DOE Contracting Officer before incurring any major construction costs.

19. Davis-Bacon Act Requirements

- a. This Agreement is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the Subrecipient, its lower tier subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2,000 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".
- b. The Subrecipient shall provide written assurances acknowledging the Davis-Bacon Act requirements for the Award and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 on projects funded directly by or assisted in whole or in part by and through funding under the 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).
- c. The Subrecipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:
 - i. ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable lower tier subcontracts or lower tier subrecipient awards.
 - ii. ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from lower tier contracts and lower tier subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.
 - iii. being responsible for compliance by any lower tier subcontractor or subrecipient with the Davis-Bacon labor standards.
 - iv. receiving and reviewing certified weekly payrolls submitted by all lower tier subcontractors and subrecipients for accuracy and to identify potential compliance issues.
 - v. maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the CEC, DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
 - vi. 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 lower tier subcontractors and subrecipients and as requested or directed by the CEC and/or DOE.

- vii. 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.
 - viii. 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.
 - ix. notifying the CEC CAM, who will in turn notify the DOE Contracting Officer, of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the Subrecipient, lower tier 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 lower tier subcontract, or subrecipient award.
 - x. preparing and submitting to the CEC CAM, who will in turn submit to the DOE 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) (<https://doeibenefits2.energy.gov>) or its successor system.
- d. The Subrecipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The CEC CAM and/or DOE's Contracting Officer will notify the Subrecipient of any DOE sponsored Davis-Bacon Act compliance trainings. The U.S. Department of Labor ("DOL") offers free [Prevailing Wage Seminars](https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events) several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.
 - e. The DOE has contracted with, a third-party Davis-Bacon Act electronic payroll compliance software application. The Subrecipient 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 lower tier contractor or subcontractor because they are unable or limited in their ability to use or access the software.
 - f. 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.
 - g. 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>.

20. Buy America Requirements for Infrastructure Projects

- a. Definitions. For purposes of the Buy America requirements, the following definitions apply:
 - i. *Components* are defined as articles, materials, or supplies, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.
 - ii. *Construction Materials* includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that

is, or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber;
- Drywall.

To the extent one of the items listed above contains as inputs other items than those listed above, it is nonetheless a construction material.

Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

iii. *Construction material standards*

1. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.”

- Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- Lumber. All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
- Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

2. Except as specifically provided, only a single standard under paragraph (a) of this section should be applied to a single construction material.

iv. *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—

1. all iron and steel used in the project are produced in the United States;
2. the manufactured products used in the project are produced in the United States; or
3. the construction materials used in the project are produced in the United States.

Also referred to as the Buy America Requirement.

- v. *Infrastructure* includes, at a minimum, the structures, facilities, and equipment for, in the United States:
- Roads, highways, and bridges;
 - Public transportation;
 - Dams, ports, harbors, and other maritime facilities;
 - Intercity passenger and freight railroads;
 - Freight and intermodal facilities;
 - Airports;
 - Water systems, including drinking water and wastewater systems;
 - Electrical transmission facilities and systems;
 - Utilities;
 - Broadband infrastructure;
 - Buildings and real property; and
 - Facilities that generate, transport, and distribute 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.

In addition to the above, the infrastructure in question must be publicly owned or must serve a public function; privately owned infrastructure that is solely utilized for private use is not considered “infrastructure” for purposes of Buy America applicability. DOE will have the final say as to whether a given project includes infrastructure, as defined herein.

For this Award specifically, all projects subject to the Award are considered “infrastructure” within the Buy America provision of BIL.

- vii. *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.
- viii. *Primarily of iron or steel* means greater than 50% iron or steel, measured by cost.
- vi. *Project* means the construction, alteration, maintenance, or repair of infrastructure in the United States.
- vi. *Public*- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance,
1. infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized
 2. primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose”
 3. if it is privately operated on behalf of the public or is a place of public accommodation.
- b. Buy America Requirement
- In accordance with section 70914 of the BIL, none of the project funds (includes federal share and Subrecipient cost share) may be used for a project for infrastructure unless:
- i. All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings,

occurred in the United States;

- ii. 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
- iii. 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.

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

c. Certification of Compliance

The Subrecipient 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 Subrecipient 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 lower tier subrecipients, contractors, subcontractors and vendors to the Subrecipient. The Subrecipient must keep these certifications with the award/project files and be able to produce them upon request from CEC, DOE, auditors or Office of Inspector General.

d. Flown down

These requirements must flow down to all lower tier subrecipients, contractors, and subcontractors, and purchase orders for work performed under the proposed project. Based on guidance from OMB Memorandum M-24-02, the Buy America requirements of the BIL do not apply to DOE projects in which the prime recipient is a for-profit entity; the requirements only apply to projects whose prime recipient is a State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization.

For additional information related to the implementation of these Buy America requirements,

please see [OMB Memorandum M-24-02](https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf), dated October 25, 2023: <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>.

e. Waivers

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

- i. Public Interest - Applying the Buy America Requirement would be inconsistent with the public interest;
- ii. 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
- iii. 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, Nonavailability, or Unreasonable Cost);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A detailed justification for the use of “non-domestic” iron, steel, manufactured products, or construction materials to include an explanation as to how the non-domestic item(s) is/are essential to the project;
- A certification that the Subrecipient 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;
- Subrecipient name and Unique Entity Identifier (UEI)
- Total estimated project cost, with estimated Federal share and Subrecipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated Federal share and Subrecipient and cost-share breakdowns;
- A brief project description, its location (to the extent known) and the specific infrastructure involved;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the Subrecipient seeks to waive from the Buy America Requirement, including name, cost, quantity(ies), country(ies) of origin (if known), and relevant Product Services Code (PSC) and North America Industry Classification System (NAICS) codes for each;
- Waiver justification statement—based on one of the applicable justifications outlined above—as to why the items in question cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost benefit analysis) by the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017

DOE may require additional information before considering the waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing [waiver](https://www.energy.gov/management/build-america-buy-america) described at <https://www.energy.gov/management/build-america-buy-america>.

DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. The 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.

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

21. Performance of Work in United States

- a. All work performed under this Award must be performed in the United States. Subrecipient must flow down these requirements to all lower tier subrecipients.
- b. If the Subrecipient fails to comply with the Performance of Work in the United States requirement, CEC and/or DOE may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable cost share. The Subrecipient is responsible should any work under this Award be performed outside the United States, absent a waiver, regardless of whether the work is performed by the Subrecipient, or its lower tier subrecipients, contractors, vendors, or other project partners.
- c. In limited circumstances where it is in the interest of the project to perform a portion of the work outside the United States, the Subrecipient must submit a written foreign work waiver request to the CEC, which will in turn submit it to the DOE. Appendix B to the FOA lists the necessary information that must be included in a foreign work waiver request. The Subrecipient must demonstrate to the satisfaction of DOE that a waiver would further the purposes of the project and is in the economic interests of the United States. DOE may require additional information before considering a waiver request. A foreign work waiver applicant does not have the right to appeal the DOE’s decision concerning a waiver request.

22. Foreign National Participation

- a. Subrecipient and project participants, including any of lower tier subrecipients and contractors, who anticipate involving foreign nationals in the performance of this Agreement, will be required to provide CEC, which will in turn provide DOE, with specific information about each foreign national to satisfy requirements for foreign national participation and access approvals. The volume and type of information required may depend on various factors associated with the DOE Award.

- b. 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 Agreement.
- c. A "foreign national" is defined as any person who is not a U.S. 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 DOE's sites, information, technologies, equipment, programs, or personnel.

23. Foreign Collaboration

- a. Consideration of new collaborations with foreign organizations and governments. The Subrecipient must provide CEC and DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Subrecipient must await further guidance from CEC and DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- b. Existing collaborations with foreign entities, organizations and governments. The Subrecipient must provide CEC and 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 Subrecipient. A thing of value includes but may not be limited to all resources made available to, or from, the Subrecipient in support of and/or related to the 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 Subrecipient's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Subrecipient's standard policies and procedures.

24. Foreign Government-Sponsored Talent Recruitment Programs Prohibition

- a. Persons participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk* are prohibited from participating in projects selected for federal funding under this Program. The Subrecipient must exercise ongoing due diligence to reasonably ensure that no individuals participating in this DOE funded project are participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the Subrecipient must notify the CEC, which will in turn notify the DOE, within five (5) business days upon learning that an owner of the Subrecipient or its lower tier subrecipients 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
 - i. Foreign Government-Sponsored Talent Recruitment Program. An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time

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

- ii. 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.

25. Transparency of Foreign Connections

During the term of the Award, the Subrecipient must notify the CEC CAM, who will in turn notify the DOE Contracting Officer, within fifteen (15) business days of learning of the following circumstances in relation to the Subrecipient or its lower tier subrecipients:

- a. 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;
- b. 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;
- c. Any current or pending change in ownership structure of the Subrecipient or its lower tier subrecipients that increases foreign ownership related to a country of risk;
- d. 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;
- e. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
- f. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Subrecipient or its lower tier subrecipient.

26. 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 United States Government share and Subrecipient match. The Subrecipient's cost match must come from non-Federal sources unless otherwise allowed by law.
- b. The required match for CEC's federal allocation is 15 percent. In addition, the Subrecipient as an eligible entity performing resilience projects is 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.
- c. By accepting federal funds under this Agreement, the Subrecipient 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.

- d. If the Subrecipient discovers that it may be unable to provide the required cost matching under this Agreement, the Subrecipient should immediately provide written notification to the CEC CAM, who will in turn notify DOE Award Administrator, indicating whether the Subrecipient will continue or phase out the project. If the Subrecipient plans to continue the project, the notification must describe how replacement cost matching will be secured.
- e. The Subrecipient must maintain records of all project costs that it claims as cost match, including in-kind costs, as well as records of costs to be paid by CEC or DOE/NNSA. Such records are subject to audit.
- f. Failure to provide the cost matching required by this term may result in the subsequent recovery by CEC or DOE of some or all the funds provided under the Award.

27. Revision of Budget and Program Plans

Any revisions to the budget or program plans for this Award must comply with 2 CFR 200.308.

28. Continued Use of Real Property and Equipment

- a. Real property and equipment purchased with project funds (federal share and Subrecipient cost share) under this Agreement 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 Subrecipient may continue to use the real property and equipment after the conclusion of the award period of performance so long as the Subrecipient:
 - i. Continues to use the property for the authorized project purposes;
 - ii. Complies with the applicable reporting requirements and regulatory property standards;
 - iii. As applicable to for-profit entities, UCC filing statements are maintained; and
 - iv. Submits a written Request for Continued Use to CEC CAM, who will in turn submit it to DOE for authorization, which is approved by the DOE Contracting Officer.
- b. The Subrecipient must request authorization from the DOE Contracting Officer, through the CEC CAM, to continue to use the property for the authorized project purposes beyond the Award period of performance ("Request for Continued Use"). The Subrecipient's written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period (e.g., perpetuity, until fully depreciated, or a calendar date where the Subrecipient expects to submit disposition instructions); acknowledgement that the Subrecipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.
- c. When the property is no longer needed for authorized project purposes, the Subrecipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310-200.316.

29. Interim Conflict of Interest Policy for Financial Assistance

- a. The [DOE interim Conflict of Interest Policy for Financial Assistance](https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-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 Principal Investigator 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.
- b. Subrecipient must flow down the requirements of the interim COI Policy to any lower tier subrecipient non-Federal entities, with the exception of DOE National Laboratories.
- c. Further, the Subrecipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports. It is understood that non-Federal entities and individuals receiving DOE financial assistance awards will need sufficient time to come into full compliance with DOE’s interim COI Policy. To provide some flexibility, DOE allows for a staggered implementation. **Specifically, prior to award, the Subrecipient selected for award negotiations must: ensure all Investigators on this Award complete their significant financial disclosures; review the disclosures; determine whether a FCOI exists; develop and implement a management plan for FCOIs; and provide CEC, which will in turn provide DOE, with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/ unmanageable).** The Subrecipient will have 180 days from the date of the award to come into full compliance with the other requirements set forth in DOE’s interim COI Policy. **Prior to award, the Subrecipient must certify that it is, or will be within 180 days of the award, compliant with all requirements in the COI Policy.**

30. Publication of Information on the Internet

[Reserved and waiting for further requirements from DOE]

31. Requirement to Report Potentially Duplicative Funding

If the Subrecipient has or receives any other award of federal funds for activities that potentially overlap with the activities funded under this Agreement, the Subrecipient must promptly notify CEC in writing, which will in turn notify DOE, of the potential overlap and state whether project funds (i.e., Subrecipient 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, the Subrecipient must promptly notify the CEC Commission Agreement Manager (CAM) in writing, who will in turn notify the DOE Contracting Officer of the potential duplication and eliminate any inappropriate duplication of funding.

32. Flood Resilience

Subrecipient must indicate whether its project location(s) is within a floodplain, how the floodplain was defined, and how future flooding will factor into the project’s design. The base floodplain used for planning has been the 100-year floodplain, that is, a floodplain with a 1.0 percent chance of flooding in any given year. As directed by Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (2015), Federal agencies, including DOE, continue to avoid development in a floodplain to the extent possible. When doing so is not possible, Federal agencies are directed to “expand management from the current base flood level to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and ensure that projects funded with

taxpayer dollars last as long as intended.” The higher flood elevation is based on one of three approaches: climate-informed science (preferred), freeboard value, or 0.2 percent annual flood change (500-year floodplain). [EO 13690 and related information](https://www.energy.gov/nepa/articles/eo-13690-establishing-federal-flood-risk-management-standard-and-process-further) is available at <https://www.energy.gov/nepa/articles/eo-13690-establishing-federal-flood-risk-management-standard-and-process-further>.

33. Indemnity

- a. The CEC 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 United States Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.
- b. The Subrecipient shall indemnify the CEC 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 CEC officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

34. Rebudgeting and Recovery of Indirect Costs

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

35. Real Property – Grid Resilience

Acquisition of land or easements is not permitted under this 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 Program, and therefore may be permitted.

36. Cybersecurity Plan

Be advised that under Section 40126 of the BIL, the Secretary of Energy has determined that this Program required CEC to submit a Cybersecurity Plan to the DOE prior to the issuance of an award. The CEC will notify the Subrecipient if any information, cybersecurity plan, or other input is needed from the Subrecipient regarding cybersecurity.

37. Reporting, Tracking, and Segregation of Incurred Costs

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

for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

38. 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.

Subpart B. General Provisions

1. Compliance with Federal, State, and Municipal Law

- a. The Subrecipient is required to comply with applicable federal, state, and municipal laws and regulations, for all work performed under this Agreement.
- b. The Subrecipient is required to obtain all necessary federal, state, and municipal permits, authorizations, and approvals for all work performed under this Agreement.
- c. Any apparent inconsistency between federal and state laws and regulations and the terms and conditions of this Award must be referred to CEC's CAM for guidance.

2. Record Retention

Subrecipient is required to retain records relating to this Award consistent with 2 CFR 200.334 through 200.338.

3. Allowable costs

- a. Allowable costs are determined in accordance with 2 CFR part 200 as amended by 2 CFR part 910. All expenditures must be allowable, allocable, and reasonable in accordance with the applicable federal cost principles. Pursuant to 2 CFR 910.352, the cost principles in the Federal Acquisition Regulations (48 CFR Part 31.2) apply to for-profit entities. The cost principles contained in 2 CFR Part 200, Subpart E apply to all entities other than for-profits. Costs to support or oppose union organizing, whether directly or as an offset for other funds, are unallowable.
- b. The Subrecipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its lower tier subrecipients and project costs that the Subrecipient claims as cost sharing, including in-kind contributions. The Subrecipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Subrecipient is required to provide such records. Such records are subject to audit. Failure to provide adequate supporting documentation may result in a determination that those costs are unallowable.
- c. Payments made for costs determined to be unallowable by either DOE, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also 2 CFR 200.300 through 200.309.

4. Indirect Costs

Subrecipient's indirect costs must be appropriately managed, be allowable, and comply with the requirements of the Award and 2 CFR Part 200 as amended by 2 CFR Part 910.

5. Property Standards

See 2 CFR 200.310 through 200.316 for requirements. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

6. Insurance Coverage

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

7. Equipment

- a. Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will vest conditionally with the non-Federal entity.
- b. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.
- c. States must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.
- d. 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 DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).
- e. Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).
- f. When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or CEC.
- g. 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 DOE; (b) Non-Federal entity may retain title or sell the equipment after compensating DOE as described in 2 CFR Part 200.313(e)(2); or (c) transfer title to DOE or to an eligible third Party as specified in CFR Part 200.313(e)(3).
- h. See 2 CFR 200.439 Equipment and other capital expenditures. Also see 2 CFR Part 200.439 Equipment and other capital expenditures.
- i. See 2 CFR Part 910.360 for amended requirements for Equipment for For-Profit recipients.

8. Supplies

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

9. Property Trust Relationship

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

10. Uniform Commercial Code (UCC) Financing Statements

Per 2 CFR 910.360 (Real Property and Equipment), when applicable, requires that when Subrecipient purchases with federal funds, and federal share of the financial assistance agreement

is more than \$1,000,000, Subrecipient must: properly record, and consent to the DOE's ability to properly record if the Recipient or Subrecipient, as applicable, fails to do so, UCC financing statement(s) for all equipment in excess of \$5,000 purchased with project funds. These financing statement(s) must be approved in writing by the DOE Contracting Officer prior to the recording, and they shall provide notice that the Recipient's or Subrecipient's title, as applicable, to all equipment (not real property) purchased with federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the government retains an undivided reversionary interest in the equipment. The UCC financing statement(s) must be filed before the DOE Contracting Officer may reimburse the Recipient or Subrecipient, as applicable, for the federal share of the equipment unless otherwise provided for in the relevant financial assistance agreement. The Recipient or Subrecipient, as applicable, shall further make any amendments to the financing statements or additional recordings, including appropriate continuation statements, as necessary or as the DOE Contracting Officer may direct.

11. Conference Spending

The Subrecipient must 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.

12. Lobbying

- a. By accepting funds under this Award, the Subrecipient agrees that it must not use, directly or indirectly, any federal funds to influence or attempt to influence, directly or indirectly, congressional action on any legislative 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.
- b. If the Subrecipient receives an award exceeding \$100,000, the Subrecipient must complete and submit [SF-LLL, "Disclosure of Lobbying Activities"](https://www.grants.gov/web/grants/forms/sf-424-individual-family.html) (<https://www.grants.gov/web/grants/forms/sf-424-individual-family.html>) to ensure that non-federal funds have not been paid and will not be paid to any person for influencing or attempting to influence any of the following in connection with the application for this Program.

13. Telecommunications and Video Surveillance Services or Equipment Prohibition

As set forth in 2 CFR 200.216, the Subrecipient is prohibited from obligating or expending project funds (Federal funds and Subrecipient cost share) to:

- a. Procure or obtain;
- b. Extend or renew a contract to procure or obtain; or
- c. 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, 2 CFR 200.216, and 2 CFR 200.471 for additional information.

14. Affirmative Action and Pay Transparency Requirements

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

- a. Subrecipient and its lower tier subrecipients, contractors and subcontractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- b. Subrecipient and its lower tier subrecipients, contractors and subcontractors 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 lower tier subrecipients, contractors and subcontractors.
- c. Subrecipient and its lower tier 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 Guide¹ should be consulted to gain an understanding of the requirements and possible actions the Subrecipient and its lower tier subrecipients, contractors and subcontractors must take. Additionally, for construction projects valued at \$35 million or more and lasting more than one year, the Subrecipient and its lower tier subrecipients, contractors and 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](https://www.dol.gov/agencies/ofccp/construction/mega-program), see <https://www.dol.gov/agencies/ofccp/construction/mega-program>.

15. Nondiscrimination

By signing this Agreement or accepting funds under this Agreement, Subrecipient assures that it

¹ See [OFCCP's Technical Assistance Guide](https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec) 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) at <http://www.nsf.gov/awards/managing/rtc.jsp>.

will comply with applicable provisions of the following, national policies prohibiting discrimination:

- a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DOE regulations at 10 CFR part 1040.
- b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042.
- d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE at 10 CFR part 1040.
- e. On the basis of handicap, in (1) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041 and (2) The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).

16. Americans with Disabilities Act of 1990

Subrecipient shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

17. Promoting Free Speech and Religious Liberty

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

18. Nondisclosure and Confidentiality Agreement Assurances

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

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

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

19. Export Control

- a. The United States Government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of federal agencies and regulations that govern exports that are collectively referred to as "Export Controls". The Subrecipient is responsible for ensuring compliance with all applicable U.S. Export Control laws and regulations relating to any work performed under this Award, at the Subrecipient level.
- b. The Subrecipient must immediately report to CEC, which will in turn report to the DOE, any export control violations related to the project funded under this Award, at the Subrecipient or a lower tier subrecipient level, and provide the corrective actions to prevent future violations.

20. Corporate Felony Conviction and Federal Tax Liability Assurances

- a. By entering into this Agreement, the Subrecipient attests that it has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.
- b. The Subrecipient further attests that it 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.
- c. 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.

21. Insolvency, Bankruptcy or Receivership

- a. The Subrecipient shall immediately notify the CEC, which will in turn notify the DOE of the occurrence of any of the following events:
 - i. the Subrecipient, or its parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act;
 - ii. the Subrecipient's consent to the institution of an involuntary case under the Bankruptcy Act against the Subrecipient, or its parent;

- iii. the filing of any similar proceeding for or against the Subrecipient, or its parent, or its consent to, the dissolution, winding-up or readjustment of the Subrecipient's debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the Subrecipient under any other applicable state or federal law; or
 - iv. the Subrecipient's insolvency due to its inability to pay its 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 paragraph a., CEC or DOE reserves the right to conduct a review of the Subrecipient's, award to determine the Subrecipient's 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 CEC or DOE review determines that there are significant deficiencies or concerns with the Subrecipient's performance under the Award, the CEC or DOE reserves the right to impose additional requirements, as needed, including:
 - i. change the Subrecipient's payment method; or
 - ii. institute payment controls.
 - d. Failure of the Subrecipient to comply with this term may be considered a material noncompliance of this financial assistance award by the CEC CAM or DOE Contracting Officer.

22. Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

- a. In accordance with Appendix II to 2 CFR Part 200, in addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by a non-Federal entity under the Federal award must contain provisions covering the following, as applicable:
- b. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- c. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- d. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- e. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the CEC, which will in turn report to the DOE. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the CEC, which will in turn report to the DOE.
- f. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- g. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- h. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the CEC, which will in turn report to the DOE and the Regional Office of the Environmental Protection Agency (EPA).
- i. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the

System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- j. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- k. See § 200.323.
- l. See § 200.216.
- m. See § 200.322.

23. Final Incurred Cost Audit

In accordance with 2 CFR Part 200 as amended by 2 CFR Part 910, the CEC and DOE reserve 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, the CEC and DOE retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

24. Required Reporting under the Federal Funding and Transparency Act of 2006

- a. Public Law 109-282, the Federal Funding Accountability and Transparency Act of 2006 as amended (FFATA), requires certain disclosures of entities and organizations receiving federal funds. The administrative requirements for complying with FFATA are contained in 2 CFR Part 170. Subrecipient must comply, as applicable, with all FFATA requirements including but not limited to providing CEC with any required data within the timeframe requested by CEC.
- b. Unless an exemption applies, CEC must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a "non-federal entity" as defined in 2 CFR Part 170 to <https://www.fsr.gov>.
- c. Unless an exemption applies, CEC must report the names and total compensation of each of Subrecipient's five most highly compensated executives for the preceding fiscal year by the end of the month following the month during which CEC made the subaward if:
 - i. In Subrecipient's preceding fiscal year, 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)
 - 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](http://www.sec.gov/answers/execomp.htm) at <http://www.sec.gov/answers/execomp.htm>).

- d. Additional definitions relevant to this Section are contained in 2 CFR Part 170.

25. Unique Entity Identifier

- a. No entity may receive a subaward under this Program from CEC until the Subrecipient entity has provided its Unique Entity Identifier to CEC. CEC may not make a subaward to an entity unless the entity has provided its Unique Entity Identifier number to CEC.
- b. Unique Entity Identifier refers to the identifier assigned by the Federal repository, System for Award Management (SAM), to uniquely identify business entities.
- c. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following for purposes of this Section:
 - i. A foreign organization;
 - ii. A foreign public entity;
 - iii. A domestic for-profit organization; and
 - iv. A Federal agency.
 - v. Subaward has the meaning given in 2 CFR 200.1.
 - vi. Subrecipient has the meaning given in 2 CFR 200.1.

26. Annual Independent Audits

- a. The Subrecipient and its lower tier subrecipients, contractors, and subcontractors must comply with the annual independent audit requirements in 2 CFR 200.500 through 2 CFR 200.521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through 2 CFR 910.521 for for-profit entities (Compliance audit).
- b. The annual independent audits are separate from Government-initiated audits and must be paid for by the Subrecipient and its lower tier subrecipients, contractors, and subcontractors. To minimize expense, the Subrecipient and its lower tier subrecipients, contractors, and subcontractors may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on Subrecipient or lower tier subrecipient, contractor, and subcontractor entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.338, Remedies for Noncompliance.

27. Integrity and Performance Matters

- a. Subrecipient must immediately notify CEC of any civil, criminal, or administrative proceedings as described in part b. of this Section, below.
- b. Subrecipient must submit information as directed by CEC about each proceeding that (1) is in connection with the award or performance of a Financial Assistance, 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:

- i. A criminal proceeding that resulted in a conviction (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*).
- ii. 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.
- iii. An administrative proceeding, 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. An administrative proceeding is 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 Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- iv. Any other criminal, civil, or administrative proceeding if (1) it could have led to an outcome described in paragraph i., ii., or .iii., above; (2) it had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and (3) the requirement in this Section to disclose information about the proceeding does not conflict with applicable laws and regulations.

28. Fraud, Waste, and Abuse

- a. 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>.
- b. The Subrecipient must disclose, in a timely manner, in writing to the DOE and the CEC all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award.
- c. Failure to make the required disclosures can result in any of the remedies described in 2 CFR 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)