



INVITATION FOR BID

**BID NAME AND NUMBER:
BTB3010 SOLAR PANELS AND BATTERIES**

**BID OPENING TIME AND DATE:
October 5, 2026 @2pm**

**BUYER:
Troy A Bacino
TABACINO@LSUNEWORLEANS.EDU**

RETURN ALL BIDS TO THE FOLLOWING ADDRESS:

**Purchasing Office
Administration Annex 1004G
University of New Orleans
2000 Lakeshore Drive
New Orleans, Louisiana 70148
Phone: (504) 280-6214
Fax: (504) 280-6297**



General Instructions to Bidders

1 Invitation to Bid

Bids for the following items and/or services specified are hereby solicited, and will be received by the Purchasing Office until the stated bid opening time and date and then publicly opened.

2 Authority to Sign

Bids must be signed by a person authorized to bind the vendor. In accordance with R. S. 39:1594(C)(4), the person signing the bid must be: 1) A current corporate officer, partnership member or other individual specifically authorized to submit bids as evidenced in appropriate records on file with the secretary of State; or 2) An individual authorized to bind the vendor, as evidenced by a corporate resolution, certificate, or affidavit; or 3) other documents indicating authority which are acceptable to the University.

3 Read Solicitation

Read the entire solicitation, including all terms, conditions, and specifications.

4 Corrections

All bids should be returned on the forms furnished and must be typed or written in ink. Any corrections or erasures must be initialed by the bidder.

5 Delivery of Bids

Bids may be submitted in person, or by mail. The mailing address is listed on the cover sheet.

Bids delivered in person or by mail should be placed in a sealed envelope and marked with the bid name and number, the bid opening time and date, and the name and address of the bidder. The same information should be affixed to any additional materials sent as a part of the bid submission.

6 Bid Alterations

Alterations to bids will be accepted provided both the bid and alterations have been received in the Purchasing Office prior to bid opening time and date.

7 Late Bids

Late bids will not be accepted and will be returned unopened. Each bidder is solely responsible for the timely delivery of its bid. The University will not be responsible for any delay in the delivery of bids.



8 Delivery/Freight Charges

Bid prices will include all delivery/freight charges paid by the vendor, F.O.B., LSUNO, inside delivery, New Orleans, La, unless otherwise stated in the specifications. Any invoiced delivery charges not quoted and itemized on the LSUNO purchase order are subject to rejection and non-payment.

9 Taxes

Vendor is responsible for including all applicable taxes in the bid price. The LSU New Orleans is exempt from all Louisiana state and local sales and use taxes. By accepting an award, all firms acknowledge their responsibility for the payment of all taxes duly assessed by the State of Louisiana and its political subdivisions for which they are liable.

10 Payment

Assuming there is no prompt payment discount provision, payment will be made within thirty (30) days from receipt of products in satisfactory condition, or within thirty (30) days from date of invoice, whichever is later. Delinquent payment penalties are governed by L.R.S. 39:1695. Vendor penalties to the contrary shall be null and void, shall have no legal force, and shall not be recognized by the University in any dispute.

11 Acceptance

Only the issue of a purchase order or a signed acceptance of a proposal constitutes acceptance on the part of the University.

Bid Signature

By signing this bid, the bidder certifies compliance with all general instructions to bidders, terms, conditions, and specifications, and further certifies that this bid is made without collusion or fraud.

Bidder (Company Name)	Mailing Address
Authorized Signature	City, State, Zip Code
Printed Name	Phone Number
Title	Fax Number
E-Mail Address	Federal Tax ID #



Standard Terms and Conditions

These standard terms and conditions apply to all LSUNO solicitations, unless otherwise specifically amended and provided for in the special terms and conditions, specifications, or other solicitation documents. In the event of a conflict between the General Instructions to Bidders or Standard Terms & Conditions and the Special Terms & Conditions, the Special Terms & Conditions shall govern.

Auditors

Bidders agrees that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors and/or the University's auditors will have the option of auditing all accounts of the Bidder which relate to this purchase.

Award

Award will be made to the lowest responsible and responsive bidder. The University reserves the right to award the items, separately, grouped, or on an all-or-none basis, and to reject any or all bids and to waive any informalities including technicalities in specifications that would preclude competition.

All solicitation specifications, terms, and conditions will be made part of any subsequent award as if fully reproduced and included therein, unless specifically amended in the formal contract.

Bidder Inquiries

If a bidder is in doubt as to the meaning of any part of a solicitation, bidder may submit a written request for interpretation to the Buyer of Record. Requests must be received in the Purchasing Office no later than September 24, 2026 prior to the opening of bids. Any interpretation of the documents will be made by Addendum only, issued by the Purchasing Office, and a copy of such Addendum will be sent to all known bidders. The University will not be responsible for any other explanation of the documents.

Contrary Terms and Conditions

Submittal of any terms and conditions contrary to those contained within this solicitation may cause your bid to be rejected. By signing this bid, vendor agrees that any terms and conditions which may be included in their bid are nullified.

Equal Employment Opportunity Compliance

By submitting and signing this bid, vendor agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Executive Order 11246,



Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Act of 1975; the Americans with Disabilities Act of 1990. Vendor agrees not to discriminate, and to render services without regard to race, color, religion, sex, age, national origin, veteran status, political affiliation, handicap, disability, or other non-merit factor. Failure to comply shall be grounds for termination of any contract entered into as a result of this solicitation.

Equivalency

Any manufacturer's names, trade names, brand names, or catalog numbers used in the specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Bids will be considered for any brand that meets or exceeds the quality of the specifications listed for any item. Bidder must state the brand/model he or she is bidding on each item. Bids not specifying brand and model number will be considered as offering the exact product specified in the solicitation.

It will be the sole responsibility of the Bidder to prove equivalency. Bidder will submit with the bid all illustrations, descriptive literature, and specifications necessary to determine equivalency. Failure to do so may eliminate the bid from consideration. The decision of the University as to equivalency will be final.

Governing Law

This purchase shall be construed in accordance with and governed by the laws of the State of Louisiana.

Louisiana Preference

A preference will be given to materials, supplies, and provision produced, manufactured, assembled, grown, or harvested in Louisiana, quality being equal to articles offered by competitors outside of the state. However, it will be the bidder's sole responsibility to indicate on his bid response which items were (or would be) produced, manufactured, assembled, grown, or harvested in Louisiana. Bidder must be able to provide satisfactory evidence to support preference claim if requested by the University. The enclosed Louisiana Preferences **must** be returned as a part of this bid.

Legislators Prohibited

According to LAS-R.S. 42:113(D)) the University is prohibited from entering into any contract or subcontract with a legislator or person who has been certified by the Secretary of State as elected to the Legislature or spouse of a legislator, or any corporation, partnership, or other legal entity in which the Legislator or his/her spouse owns an interest, except publicly traded corporations. Each bidder **must** return the enclosed Disclosure Form as a part of his bid.



New Products

All products are to be new, current model, and of best quality as measured by accepted standards of the trade. No remanufactured, demonstrator, used, or irregular products will be considered for purchase unless otherwise specified.

Warranty

The manufacturer's standard published warranty and provision will apply, unless more stringent warranties are otherwise required by UNO and specified in the solicitation. In such cases, the bidder and/or manufacturer will honor the specified warranty requirements, and bid prices will include any premium costs of such coverage.



DISCLOSURE FORM

EACH BIDDER IS TO DISCLOSE THE FOLLOWING INFORMATION BY ANSWERING YES OR NO TO THE FOLLOWING QUESTIONS:

1. Is the bidder a legislator or person who has been certified by the Secretary of State as elected to the Legislature? _____
2. Is the bidder a spouse of a legislator? _____
3. If the bidder is a corporation, partnership, or other legal entity, does a legislator or his spouse own any interest in that corporation, partnership or other legal entity? _____
4. If the bidder is a corporation, is it a publicly traded corporation? _____

LOUISIANA PREFERENCES

FAILURE TO SPECIFY BELOW INFORMATION **WILL** CAUSE ELIMINATION FROM PREFERENCE.

Preferences shall not apply to service contracts.

In accordance with the Louisiana Revised Statutes 39:1595, a preference of 10% may be allowed for products produced, manufactured, grown or assembled in Louisiana of equal quality.

Do you claim this preference? YES _____ NO _____

Specify Item Numbers:

Specify location within Louisiana where this product is produced, manufactured, grown or assembled:

Do you have a Louisiana Business workforce? YES _____ NO _____

If so do you certify that at least fifty percent (50%) of your Louisiana business workforce is comprised of Louisiana residents?

YES _____ NO _____



Special Terms and Conditions

1. All items delivered shall be subject to inspection as to grade and/or quality. If any item is inspected and fails to meet the specifications, the delivery already made will be held for the Vendor's disposition or returned to the Vendor via Freight Collect. If the Vendor fails to make satisfactory replacement within a reasonable time as determined by the University, the University reserves the right to cancel the item and to purchase it elsewhere.
2. If bidding other than the specified brand/model, documentation must be submitted with the bid.
3. The above quantities are estimated to be the amounts needed. In the event a greater or lesser quantity is needed, the right is reserved by the University to increase or decrease the amount at the unit price stated in the bid.
4. In the event a greater quantity is needed, the right is reserved by the University to increase the amount, at the unit price stated in the bid, for 12 months from the date of award.
5. At the option of the University and acceptance by the contractor, this contract may be extended for four additional twelve (12) month periods at the same prices, terms, and conditions. The initial contract period will be from date of award through June 30th of the initial contract year. Renewals will be from July 1st through June 30th of the remaining contract years. Contract shall not exceed sixty (60) months.
6. Discounts for less than 1% and for less than thirty (30) days will not be considered in making awards.
7. Site Visit: In order to ascertain the true scope of the services requested, all bidders are urged and expected to inspect the site where services will be performed. Arrangements to do so may be made by contacting the buyer. Failure to inspect the site will **not** constitute grounds for a claim after contract award.
8. NOTE: If, upon visiting site, Vendor finds conditions that disagree with the physical layout as described in this bid, or other features of the specifications that appear to be in error, vendor shall notify the buyer immediately.



9. The University reserves the right to cancel this contract upon thirty (30) days written notice for failure of the Vendor to deliver on time, for delivery of unsatisfactory merchandise, or for any unsatisfactory performance by the Vendor as determined by the University.
10. This agreement may be terminated by either party with 60 days advance notice in writing.
11. Successful bidder will furnish written factory instructions for the operation and maintenance of the equipment purchased.
12. Successful bidder will be responsible for the unloading and placing of equipment and/or supplies in the location designated by the University.
13. Successful bidder will furnish a representative to demonstrate the operation and maintenance of the equipment.
14. Vendor compliance with the attached insurance requirements is mandatory, and evidence of such compliance must be submitted before work can commence.
15. The successful bidder will be required to assume responsibility for all services and/or products offered in his/her bid whether or not he/she produces them. Further, the University of New Orleans will consider the selected bidder to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
16. List of distributors: The Vendor signing the bid must be an authorized dealer and shall be designated as the Prime Vendor on any contract/agreement resulting from this bid. If additional Vendors are authorized to receive orders for items covered under this proposal, the Vendor must submit, with bid, a list of those additional authorized distributors.
17. Vendors are advised that all hazardous products must be accompanied by a "Hazardous Materials Data Sheet". This sheet must also include suggested antidotes for ingestion and other contact.
18. Successful Vendor shall inspect jobsite and make his/her own measurements prior to installation.



19. Items furnished shall be delivered to the University, uncrated, set in place, installed (if requested), and all debris removed by the Vendor.
20. Scope of Work: work shall include all labor, materials, and services required to produce a completed repair/installation which is acceptable to the University.
21. Final Clean-Up: Before this project is acceptable and complete, Vendor shall clean up and remove from the premises all debris resulting from his work, and shall see to it that all the equipment and supplies furnished is/are left in good order, clean, and properly installed.
22. Award to be made on an all-or-none basis. Optional items not included in the award model.
23. All equipment must be new and delivered F.O.B. LSU NEW ORLEANS, inside delivery.
24. All hardware and software must be new and delivered, F.O.B. University of New Orleans, inside delivery.
25. This is not a proprietary specification. Other manufacturer and model will be considered.
26. Fiscal Funding: The continuation of any agreement entered into as a result of this bid past the current fiscal year is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.



27. Escalation Clause (Only for services you know will increase. e.g. insurance)

Prior to any renewal term, the contractor may request a price increase for that renewal term based on documented increase costs. The price increase may not be greater than the Consumer Price Index (All Urban Consumers, Current Series) average increase for the prior 12 months. The University reserves the right to approve or disapprove the price increase.

28. Piggyback: Other Louisiana Governmental Agencies may purchase at the same terms and conditions if agreed upon by awarded bidder.

29. Prohibition of Discriminatory Boycotts of Israel

In preparing its response, the Respondent has considered all Proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or Entity that is engaging in commercial transactions in Israel or Israeli-controlled territories, with the specific intent to accomplish a boycott or divestment of Israel. Respondent also has not retaliated against any person or other Entity for reporting such refusal, termination, or commercially limiting actions. The State reserves the right to reject the response of the Respondent if this certification is subsequently determined to be false, and to terminate any Contract awarded based on such a false response.

30. See attachment E for Dept. of Commerce terms.



LSU New Orleans desires to purchase and installation of solar panels and batteries as specified in the specifications below.

Total price for solar panels, batteries, and installation \$ _____

Optional price for monthly maintenance \$ _____ per month

Attach maintenance plan.

Optional price for solar panel \$ _____ each.

Optional price for battery \$ _____ each.

Labor rate for repairs Straight Time \$ _____ per hour.

Labor rate for repairs OT/Holiday Time \$ _____ per hour

Discount _____ % off list price for parts.

Markup for parts with no list price _____ %



INSURANCE REQUIREMENTS FOR CONTRACTORS

The Contractor shall purchase and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. Workers Compensation

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

2. Commercial General Liability

Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general annual aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

3. Automobile Liability

Automobile Liability Insurance shall have a minimum combined single limit per accident of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and accepted by the Agency. The Contractor shall be responsible for all deductibles and self-insured retentions.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. The Agency, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor. ISO Forms CG 20 10 (for ongoing work) AND CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalents, are to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the Agency.

b. The Contractor's insurance shall be primary as respects the Agency, its officers, agents, employees and volunteers for any and all losses that occur under the contract. Any insurance or self-insurance maintained by the Agency shall be excess and non-contributory of the Contractor's insurance.

2. Workers Compensation and Employers Liability Coverage



To the fullest extent allowed by law, the insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for the Agency.

3. All Coverages

- a. All policies must be endorsed to require 30 days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits.
- b. The acceptance of the completed work, payment, failure of the Agency to require proof of compliance, or Agency's acceptance of a non-compliant certificate of insurance shall not release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

1. All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of **A:-VI or higher**. This rating requirement may be waived for workers compensation coverage only.
2. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days.

E. VERIFICATION OF COVERAGE

1. Contractor shall furnish the Agency with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any contract renewal or insurance policy renewal thereafter.
2. The Certificate Holder Shall be listed as follows:

State of Louisiana
LSU New Orleans, Its Officers, Agents, Employees and Volunteers
2000 Lakeshore Drive, New Orleans, LA 70148
Contract #: BTB3010
3. In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.



4. Upon failure of the Contractor to furnish, deliver and maintain required insurance, this contract, at the election of the Agency, may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

F. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Agency reserves the right to request copies of subcontractor's Certificates at any time.

G. WORKERS COMPENSATION INDEMNITY

In the event Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

H. INDEMNIFICATION/HOLD HARMLESS AGREEMENT

1. Contractor agrees to protect, defend, indemnify, save, and hold harmless, the University of New Orleans, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of the University of New Orleans, its officers, agents, servants, employees and volunteers.
2. Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent. The University of New Orleans may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling of and expenses for all claims.



INDEMNIFICATION AGREEMENT

The _____ {Contractor/Lessee} agrees to protect, defend, indemnify, save, and hold harmless, the University of New Orleans, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of _____ {Contractor/Lessee}, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by _____ {Contractor/Lessee} as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of the University of New Orleans, its officers, agents, servants, employees and volunteers.

_____ {Contractor/Lessee} agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent. The University of New Orleans may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling of and expenses for all claims.

Accepted by _____
Company Name

Signature

Title

Date Accepted _____

Is Certificate of Insurance Attached? _____ Yes _____ No

Contract No. _BTB3010_ for the University of New Orleans

PURPOSE OF CONTRACT: _install solar panels and batteries._



TECHNICAL SPECIFICATION

SECTION 26 31 13

PHOTOVOLTAIC MODULES

Half-Cell N-Type Bifacial Monocrystalline Silicon Modules

Basis of Design: SEG Solar Yukon N Series (620–640 Wp) or Approved Equal

PART 1 – GENERAL

1.1 SUMMARY

- A. Furnish crystalline silicon photovoltaic (PV) modules as specified herein for a grid-tied or hybrid solar PV system in order to support a 650kW solar array farm. The solar farm will be installed under a separate contract.
- B. Modules shall be half-cell, N-type, bifacial, monocrystalline silicon technology suitable for commercial, industrial, or utility-scale installations.

1.2 REFERENCES

- IEC 61215 / IEC 61730 – Design qualification and type approval / Safety qualification
- UL 61730 / UL 61215 – Safety and performance standards for PV modules
- IEC 62804 – Potential Induced Degradation (PID) resistance
- IEC 61701 – Salt mist corrosion testing
- IEC 62716 – Ammonia resistance
- IEC 60068 – Dust and sand resistance
- IEC 61215 – Hailstone impact resistance
- Fire Type (UL 61730) Type 29
- ISO 14001:2015, ISO 9001:2015, ISO 45001:2018
- Applicable national, state, and local electrical codes (including NEC Article 690) and utility interconnection requirements

1.3 SUBMITTALS

- Complete product data sheets and technical specifications for the proposed module
- IEC / UL test certificates and current listing reports
- Factory flash test reports for production modules (or representative samples)
- Product and linear power output warranty documents
- Manufacturer installation manual and mechanical load ratings



- Dimensional drawings showing overall size and mounting hole locations
- Evidence of USA-based liability insurance and domestic support presence (preferred)

1.4 QUALITY ASSURANCE

- Manufacturer shall be an established, vertically integrated PV module producer with demonstrated production capacity and shipping history.
- Modules shall be factory-assembled, tested, and labeled.
- Installer shall be experienced in bifacial module installation and shall follow the manufacturer's written installation instructions.

1.5 WARRANTY

- Product material and workmanship warranty: Minimum 15 years.
- Linear power output warranty: Minimum 30 years.
 - Year 1 degradation $\leq 1.0\%$ (or better as published by manufacturer).
 - Subsequent annual degradation consistent with the manufacturer's published linear warranty curve (typical residual power at end of warranty $\geq 87-88\%$ of nameplate).
- Warranty shall be transferable and backed by the manufacturer or equivalent insurance-backed coverage.

PART 2 – PRODUCTS

2.1 MANUFACTURERS

- **Basis-of-Design Product:** SEG Solar Yukon N Series (SEG-620/625/630/635/640-BTZ-BG or current equivalent model), 156-cell half-cell N-type bifacial module.
- **Acceptable Alternates:** Equal or better N-type half-cell bifacial modules that meet or exceed all performance, mechanical, electrical, and certification requirements of this Section. Substitutions require prior written approval by the Owner/Engineer.

2.2 MODULE PERFORMANCE REQUIREMENTS

- A. Cell Technology: N-type mono-crystalline, half-cut cells, multi-busbar (super multi-busbar preferred).
- B. Bifaciality: Minimum $80\% \pm 10\%$.
- C. Power Classes (select as required by design): 620 W, 625 W, 630 W, 635 W, or 640 W STC.
- D. Module Efficiency: Minimum 22.18% (620 W class) up to 22.90% (640 W class) at STC.
- E. Power Tolerance: 0 to +4.99 W (positive-only tolerance).
- F. Temperature Coefficients (maximum absolute values):
 - P_{max}: $-0.30\%/^{\circ}\text{C}$
 - V_{oc}: $-0.25\%/^{\circ}\text{C}$
 - I_{sc}: $+0.046\%/^{\circ}\text{C}$
- G. Operating Temperature Range: -40°C to $+85^{\circ}\text{C}$.
- H. Nominal Operating Cell Temperature (NOCT): $45 \pm 2^{\circ}\text{C}$.
- I. Maximum System Voltage: 1500 V DC.
- J. Maximum Series Fuse Rating: 30 A.



2.3 ELECTRICAL CHARACTERISTICS (STC)

Standard Test Conditions: 1000 W/m², 25 °C, AM1.5 spectrum. Measuring tolerance ±3 %.

Typical values for the 640 W class (adjust proportionally for lower power classes per manufacturer published data):

- Maximum Power (P_{max}): 640 W
- Open Circuit Voltage (V_{oc}): ≈ 57.3 – 57.4 V
- Short Circuit Current (I_{sc}): ≈ 13.9 – 14.0 A
- Maximum Power Voltage (V_{mp}): ≈ 48.0 – 48.1 V
- Maximum Power Current (I_{mp}): ≈ 13.3 – 13.4 A

NOCT and BNPI (bifacial) values shall match the manufacturer's published data sheets.

2.4 MECHANICAL SPECIFICATIONS

- A. External Dimensions: Approximately 2465 × 1134 × 30 mm (96.7"x44.65"x1.18" or current published equivalent).
- B. Weight: Approximately 34.0 kg.
- C. Front Glass: 2.0 mm AR-coated heat-strengthened glass.
- D. Back Glass: 2.0 mm heat-strengthened glass (bifacial construction).
- E. Frame: Anodized aluminum alloy.
- F. Junction Box: IP68 rated, with 3 bypass diodes.
- G. Connectors: MC4 or compatible equivalent; 12 AWG PV wire (UL listed).
- H. Cable Length: 400 mm (+) / 200 mm (-) standard, or custom lengths as required by design.
- I. Mechanical Load Ratings:
 - Front: 5400 Pa / 113 psf
 - Rear: 2400 Pa / 50 psf
- J. Cells: 156 pcs (78 × 2) N-type mono-crystalline.



2.5 CERTIFICATIONS & ENVIRONMENTAL RESISTANCE

Modules shall be certified and listed to the following standards (or current equivalent):

- IEC 61215 / IEC 61730 / UL 61730
- IEC 62804 (PID resistance)
- IEC 61701 (Salt Mist)
- IEC 62716 (Ammonia Resistance)
- IEC 60068 (Dust and Sand)
- Hail resistance per IEC 61215
- Fire Type 29 (UL 61730)
- Additional listings (ETL, California Energy Commission, etc.) preferred.

2.6 PACKING & SHIPPING

Modules shall be shipped in protective packaging suitable for container or truck transport. Typical packing configuration: 36 pieces per pallet (20' GP container); quantities for 40' HQ and 53' trailers per manufacturer documentation. A total of approximately 1000 panels will be required.

End of Section 26 31 13



STANDARD SPECIFICATIONS BOOK BATTERY ENERGY STORAGE SYSTEM (BESS)

RATED POWER	USABLE ENERGY	NOMINAL VOLTAGE
250 kW AC continuous	1,500 kWh usable (BOL) (MAX)	208 V, 3-Phase, 60 Hz

For Competitive Bidding

Project Location: Gulf South Region (Louisiana / Texas Gulf Coast)

Document Date: August 17, 2026 | ISSUED FOR COMPETITIVE BIDDING

This document defines the minimum technical, performance, safety, and commercial requirements for a complete, fully functional Battery Energy Storage System. Bidders shall provide a turnkey solution meeting or exceeding all requirements herein.

All proposals shall be based on the ratings, codes, standards, and performance criteria stated. Deviations must be clearly identified in a separate deviations list.

PART 1 — GENERAL

1.1 SUMMARY / SCOPE OF WORK

- A. This Section includes the design, engineering, manufacture, factory testing, supply, delivery, field testing, commissioning, training, and warranty of a complete turnkey Battery Energy Storage System (BESS) as specified herein.
- B. The BESS shall be a factory-integrated, UL9540 listed system consisting of lithium-ion battery modules (preferably Lithium Iron Phosphate — LFP), Power Conversion System (PCS), Battery Management System (BMS), Energy Management System (EMS), thermal management, fire detection/suppression, enclosures, AC and DC protection, communications, and all necessary auxiliaries.
- C. System Ratings (minimum, measured at the Point of Interconnection — POI):
 - Continuous AC Power: 250 kW (charge and discharge)
 - Usable Energy Capacity (beginning of life, AC at POI): 1440 kWh
 - Nominal AC Voltage: 208 V, 3-phase, 60 Hz, 3-wire or 4-wire as required by site
 - Duration at rated power: approximately 5.5 hours
- D. Intended Applications: peak shaving / demand charge management, time-of-use energy shifting, backup power / islanding capability (grid-forming preferred), solar self-consumption (if co-located), and grid support services as required by the Interconnecting utility.
- E. The Contractor shall be responsible for a complete, code-compliant installation ready for commercial operation, including all civil pads, grounding, conduits, cabling, transformers (if required for 208 V interface), disconnects, metering interfaces, and coordination with the Owner's existing electrical system and utility interconnection requirements.



1.2 RELATED SECTIONS

- Division 03 — Concrete (equipment pads)
- Division 26 — Electrical (general power, grounding, raceways, switchboards)
- Section 26 05 00 — Common Work Results for Electrical
- Section 26 05 26 — Grounding and Bonding
- Section 26 24 13 — Switchboards
- Section 26 28 16 — Enclosed Switches and Circuit Breakers



1.3 REFERENCES (CODES & STANDARDS)

The BESS and its installation shall comply with the latest editions of the following (or superseding) standards and codes as applicable at the time of bid:

Standard	Title/ Application
UL 9540	Energy Storage Systems and Equipment (system listing required)
UL 9540A	Test Method for Evaluating Thermal Runaway Fire Propagation
UL 1973	Batteries for Use in Stationary and Motive Auxiliary Power Applications
UL 1741 SB	Inverters, Converters, Controllers and Interconnection System Equipment
IEEE 1547-2018	Interconnection and Interoperability of Distributed Energy Resources
IEEE 1547.1	Conformance Test Procedures for Equipment Interconnecting DERs
NFPA 855	Standard for the Installation of Stationary Energy Storage Systems
NFPA 70	National Electrical Code (NEC), Article 706 — Energy Storage Systems
NFPA 70E	Standard for Electrical Safety in the Workplace
NFPA 72	National Fire Alarm and Signaling Code
IEC 62619	Secondary cells and batteries — Safety requirements
UN 38.3	Transportation Testing for Lithium Batteries
IEEE 519	Recommended Practice for Harmonic Control
Local AHJ	Authority Having Jurisdiction requirements (fire marshal, building dept, utility)

Note: Where conflicts exist between codes/standards and this specification, the more stringent requirement shall govern. Contractor shall identify all conflicts in the bid.

1.4 DEFINITIONS

BESS: Battery Energy Storage System — complete integrated system including batteries, PCS, BMS, EMS, thermal management, enclosures, and protection.

PCS: Power Conversion System (bidirectional inverter/rectifier).

BMS: Battery Management System — monitors and protects individual cells/modules/racks.

EMS: Energy Management System — higher-level control, scheduling, and grid interface.

POI: Point of Interconnection — the electrical point at which the BESS connects to the facility or utility system; all power and energy ratings are referenced to the POI.

Usable Energy: AC energy delivered at the POI from 100 % SOC to the manufacturer-defined minimum SOC (typically 80–90 % of nameplate depending on chemistry and warranty).

RTE: Round-Trip Efficiency (AC–AC) including all auxiliary loads.

SOH: State of Health — remaining capacity relative to beginning-of-life.

DoD: Depth of Discharge.

C-rate: Charge or discharge current relative to rated capacity (1C = full capacity in one hour).

Grid-Forming: PCS capability to establish voltage and frequency independently (islanded operation).

Grid-Following: PCS that synchronizes to an existing grid voltage/frequency reference.

1.5 SUBMITTALS

A. Bid Submittals (with Proposal):

- Completed Appendix A — Minimum Performance Data Sheet
- Preliminary single-line diagram showing proposed interconnection
- Product data sheets for batteries, PCS, BMS, EMS, fire system



- UL 9540 listing certificate and UL 9540A test summary (or commitment to provide prior to shipment)
- Proposed warranty terms and cycle/calendar life guarantees
- Preliminary layout / footprint drawing and weight schedule
- Deviations list (if any)
- Proposed project schedule (engineering, manufacturing, delivery, installation, COD)

B. Post-Award / Shop Drawing Submittals:

- Detailed single-line, three-line, and control diagrams
- Equipment layout plans, elevations, and foundation/pad requirements
- Bill of materials with manufacturer part numbers
- Protection coordination study and arc-flash study (as applicable)
- Interconnection application support documentation for utility
- Factory Acceptance Test (FAT) procedure
- Commissioning and Site Acceptance Test (SAT) procedures
- Operation & Maintenance manuals (electronic + hard copies)
- As-built drawings and final settings

1.6 QUALITY ASSURANCE

- A. **Manufacturer Qualifications:** BESS system integrator shall have a minimum of five (5) years experience supplying UL 9540 listed commercial/industrial BESS of similar power and energy rating, with at least three (3) successfully commissioned projects in the United States.
- B. **Installer Qualifications:** Licensed electrical contractor experienced in energy storage installations, with documented training from the BESS manufacturer or system integrator.
- C. The complete BESS shall be listed to UL 9540. Individual major components shall carry appropriate UL or equivalent listings (UL 1973 for batteries, UL 1741 SB for PCS).
- D. Factory Acceptance Testing (FAT) shall be performed and witnessed (or documented with video/report) prior to shipment.

1.7 DELIVERY, STORAGE & HANDLING

- A. Equipment shall be delivered in manufacturer's original packaging, protected against weather, shock, and vibration. Batteries shall be shipped in accordance with UN 38.3 and applicable hazardous materials regulations.
- B. On-site storage shall maintain batteries within manufacturer-recommended temperature and SOC limits. Contractor is responsible for any degradation occurring due to improper storage prior to commercial operation.

1.8 WARRANTY

- A. **Product Warranty:** Minimum ten (10) years from Commercial Operation Date (COD) covering defects in materials and workmanship for the complete BESS (batteries, PCS, BMS, EMS, thermal system, enclosures, and auxiliaries).
- B. **Performance (Capacity) Warranty:** The system shall retain a minimum of seventy percent (70 %) of the original usable energy capacity (1,376 kWh) at the end of year 10, or after the equivalent of 4,000 full equivalent cycles, whichever occurs first, under the defined duty cycle and operating conditions. Annual capacity tests shall be permitted to verify compliance.
- C. **Availability Guarantee (optional but preferred):** Minimum 95 % annual availability (excluding scheduled maintenance and force majeure) during the warranty period.
- D. Warranty shall include parts, labor, and travel for remediation of warranted failures. Extended warranty options beyond 10 years shall be offered as alternates.



1.9 PROJECT CONDITIONS / SITE REQUIREMENTS

- A. Ambient Conditions: System shall operate at full rated power and energy without derating between -20°C to $+45^{\circ}\text{C}$ (-4°F to $+113^{\circ}\text{F}$) ambient, with derating allowed above 45°C up to 50°C maximum. Relative humidity 5–95 % non-condensing. Altitude $\leq 1,000\text{ m}$ (3,280 ft) without derating.
- B. Installation Environment: Outdoor, NEMA 3R / IP54 minimum enclosures. System shall be suitable for Gulf South climate (high humidity, occasional extreme heat, potential salt air if near coast).
- C. Seismic: Equipment and anchoring shall meet applicable IBC seismic design category for the project site.
- D. Noise: Maximum 70 dBA at 1 meter from any enclosure under full load operation.

PART 2 — PRODUCTS

2.1 MANUFACTURERS / ACCEPTABLE PRODUCTS

- A. The BESS shall be a complete, factory-integrated system from a single responsible system integrator or manufacturer that holds the UL 9540 listing for the offered configuration.
- B. Acceptable manufacturers/integrators include (but are not limited to) those with proven commercial installations meeting the ratings and standards herein, such as: Generac, Cummins, Eaton, or Approved Equal. The Owner reserves the right to approve or reject proposed manufacturers based on experience, safety record, and financial stability.
- C. All major components (battery cells/modules, PCS, BMS) shall be from established Tier-1 suppliers with documented quality systems (ISO 9001 or equivalent).

2.2 SYSTEM PERFORMANCE REQUIREMENTS

All ratings shall be guaranteed at the Point of Interconnection under the ambient conditions stated in Section 1.9. Nameplate energy shall be clearly distinguished from usable energy. Bidder shall state both values.

Parameter	Requirement
Continuous AC Power (charge & discharge)	250 kW minimum at POI, 208 V, 3 ϕ , 60 Hz
Usable Energy Capacity (BOL, AC at POI)	1,376 kWh minimum
Round-Trip Efficiency (AC–AC, incl. auxiliaries)	$\geq 88\%$ at rated power, 25°C
Power Factor Range	Unity to ± 0.8 (full four-quadrant preferred)
Total Harmonic Distortion (current)	$< 3\%$ at rated power (IEEE 519 compliant)
Overload Capability	110 % for 10 minutes; $\geq 120\%$ for 10 seconds
Response Time (0 to rated power)	$\leq 100\text{ ms}$ (preferred $\leq 50\text{ ms}$ for grid services)
Voltage Range (AC)	208 V $\pm 10\%$ continuous
Frequency Range	57–63 Hz continuous (IEEE 1547 ride-through)
Cycle Life (to 70 % SOH)	4,000 full equivalent cycles or 10 years calendar
Calendar Life	10 years to 70 % SOH under defined conditions
Depth of Discharge (usable)	$\geq 80\%$ of nameplate preferred; state clearly
C-rate (continuous)	Approximately 0.18 C (based on 1,376 kWh / 250 kW)

2.3 BATTERY MODULES & RACKS

- A. Chemistry: Lithium Iron Phosphate (LFP / LiFePO_4) is strongly preferred for superior thermal stability, cycle life, and safety. Nickel-Manganese-Cobalt (NMC) may be offered as an alternate with documented UL 9540A results and enhanced thermal management; LFP will receive preference in evaluation.



- B. Cells shall be prismatic or pouch, industrial grade, with individual cell voltage and temperature monitoring.
- C. Modules and racks shall be UL 1973 listed. Complete system shall be UL 9540 listed.
- D. Battery racks shall include integrated DC disconnects, fusing or circuit breakers, and clear labeling of voltage, capacity, and polarity. Front-access is preferred for serviceability.
- E. State of Charge (SOC) operating window shall be clearly defined (e.g., 5–95 % or 10–90 %). Usable energy shall be the energy delivered within this window at the POI.

2.4 POWER CONVERSION SYSTEM (PCS)

- A. The PCS shall be a bidirectional, three-phase inverter/rectifier rated for continuous 250 kW AC at 208 V. If the native PCS voltage is 480 V, a dedicated isolation or autotransformer suitable for continuous bidirectional operation shall be provided and included in the system efficiency and losses.
- B. PCS shall be UL 1741 SB certified and IEEE 1547-2018 compliant, including required voltage and frequency ride-through, anti-islanding, and interoperability functions.
- C. Preferred: Grid-forming capability for seamless island / backup operation. Grid-following is acceptable if clearly stated; islanding capability is a desirable feature for this project.
- D. Efficiency: Peak PCS efficiency ≥ 97.5 %; CEC weighted efficiency ≥ 96.5 %.
- E. Cooling: Forced air or liquid cooling acceptable provided acoustic and reliability requirements are met. Liquid cooling is preferred for higher power density and quieter operation.
- F. The PCS shall support full four-quadrant operation (active and reactive power) within the power factor range specified.

2.5 BATTERY MANAGEMENT SYSTEM (BMS)

- A. Multi-level BMS architecture (cell $\rightarrow$ module $\rightarrow$ rack $\rightarrow$ system) with continuous monitoring of voltage, current, temperature, and SOC/SOH for every cell or minimum every module.
- B. Protective functions shall include over/under voltage, over current, over/under temperature, short-circuit, and isolation fault detection. Automatic disconnect of affected strings/racks on fault.
- C. Cell balancing (active or passive) shall maintain cell voltage deviation within manufacturer limits throughout life.
- D. BMS shall communicate with the EMS via standard industrial protocols (CAN, Modbus, or equivalent) and provide detailed diagnostic data for remote monitoring.

2.6 ENERGY MANAGEMENT SYSTEM (EMS) / CONTROLS

- A. The EMS shall provide local and remote control of charge/discharge power, SOC limits, operating modes, and scheduling. Minimum operating modes: peak shaving, time-of-use shifting, self-consumption, backup/island, and manual set-point control.
- B. Local HMI (touchscreen or equivalent) for status, alarms, and basic control. Remote access via secure web portal or VPN with role-based permissions.
- C. Data logging of power, energy, SOC, temperatures, alarms, and events at 1-second resolution (or better) with minimum 90 days local storage and cloud/remote archival capability.
- D. Integration capability with facility Building Management System or existing SCADA via Modbus TCP, DNP3, or OPC-UA. API documentation shall be provided.
- E. Automatic black-start and seamless transition to islanded mode (if grid-forming PCS is provided) upon loss of utility voltage.

2.7 THERMAL MANAGEMENT

- A. Active thermal management (forced air or liquid cooling) is required to maintain battery cell temperatures within the manufacturer's recommended range under all operating and ambient conditions specified.



- B. Liquid cooling is preferred for uniform temperature distribution and lower acoustic noise. Air cooling is acceptable if cell-to-cell temperature delta is maintained within limits and noise criteria are met.
- C. Thermal system shall include redundant fans/pumps as appropriate and automatic shutdown or power limiting on thermal faults.

2.8 FIRE DETECTION, SUPPRESSION & SAFETY

- A. The system shall comply with NFPA 855 installation requirements. UL 9540A test results shall determine required separation distances, deflagration venting, and suppression strategy.
- B. Minimum fire safety features:
 - Early detection of off-gassing / thermal runaway precursors (gas sensors / Li-ion Tamer or equivalent)
 - Smoke and heat detection per NFPA 72
 - Automatic fire suppression system (aerosol, clean agent, or water-based as appropriate to UL 9540A results and AHJ)
 - Deflagration vents sized and oriented per NFPA 68 / 855 guidance
 - Emergency stop (E-stop) pushbuttons and remote trip capability
 - Clear labeling of hazards, emergency procedures, and disconnect locations
- C. A formal Hazard Mitigation Analysis (HMA) prepared by a licensed Professional Engineer shall be provided if required by the AHJ or NFPA-855 edition in force.

2.9 ENCLOSURES & OUTDOOR RATING

- A. All outdoor equipment shall be housed in NEMA 3R / IP54 (minimum) enclosures suitable for the Gulf South environment. Higher ratings (NEMA 4 / IP65) preferred for coastal or high-humidity sites.
- B. Enclosures shall be corrosion-resistant (powder-coated steel, aluminum, or stainless as appropriate). C5 or equivalent corrosion protection preferred near salt air.
- C. Cabinets shall provide front or side access for maintenance. Lifting points and forklift pockets shall be provided.
- D. Overall system footprint and weight shall be minimized while meeting access, ventilation, and fire separation requirements.

2.10 ELECTRICAL PROTECTION & INTERCONNECTION

- A. AC and DC disconnecting means shall be provided in accordance with NEC Article 706 and local utility requirements. Disconnects shall be lockable in the open position and clearly labeled.
- B. Overcurrent protection, surge protection, and grounding shall comply with NEC and IEEE recommendations. Ground fault detection and interruption shall be provided on both AC and DC sides as applicable.
- C. The Contractor shall coordinate protective device settings with the facility's existing protection scheme and the utility interconnection requirements. A coordination study shall be submitted for review.
- D. If a step-up or step-down transformer is required to interface the PCS with the 208 V facility system, the transformer shall be included in the scope, sized for continuous bidirectional full power, and its losses included in the guaranteed round-trip efficiency.
- E. Metering: Revenue-grade or facility-grade metering at the POI for energy import/export and power quality as required by Owner or utility.

2.11 COMMUNICATIONS & SCADA INTERFACE

- A. Standard industrial protocols: Modbus TCP (minimum), DNP3, and/or OPC-UA. Ethernet (copper and optional fiber) interface.
- B. Secure remote access for monitoring and (with proper authorization) control. Cybersecurity features consistent with current best practices (password protection, role-based access, encrypted communications).



- C. Local alarm contacts (dry contacts) for critical faults, fire, and emergency stop for interface to facility fire alarm and building management systems.

2.12 AUXILIARY POWER & UPS

- A. Auxiliary loads (thermal management, controls, BMS, EMS, fire system, lighting, receptacles) shall be powered from a dedicated auxiliary circuit. Preferred source is the facility 208 V or 120/208 V system; alternatively the BESS may supply its own auxiliaries from the DC bus or AC output via internal UPS/inverter.
- B. Critical controls and BMS shall be backed by a UPS sized for orderly shutdown (minimum 15–30 minutes) in the event of loss of all AC sources.

PART 3 — EXECUTION

3.1 EXAMINATION & PREPARATION

- A. Contractor shall verify site conditions, available space, foundation requirements, existing electrical infrastructure, utility interconnection point, and access routes prior to final design and equipment release.
- B. Concrete equipment pads shall be designed for the static and dynamic loads of the BESS, including seismic and wind loads. Pads shall be level, properly drained, and provide required clearances for maintenance and fire separation per NFPA 855 and manufacturer instructions.

3.2 INSTALLATION

- A. Installation shall be performed by qualified personnel in accordance with manufacturer instructions, NEC, NFPA 855, and all applicable codes. All work shall be supervised by the system integrator or authorized representative.
- B. Grounding and bonding shall comply with NEC Article 250 and manufacturer recommendations. Equipment grounding conductors and grounding electrode system shall be installed as required.
- C. All power and control cabling shall be installed in appropriate raceways, properly supported, and terminated with listed connectors. Cable entries shall maintain enclosure integrity (glands, seals).
- D. Fire detection and suppression systems shall be installed and interfaced with the facility fire alarm system as required by the AHJ.
- E. Clear working space and egress paths shall be maintained per NEC and NFPA 855.

3.3 FIELD QUALITY CONTROL / TESTING & COMMISSIONING

- A. Factory Acceptance Test (FAT): Prior to shipment, the complete system (or representative string) shall undergo functional testing including charge/discharge, protection trips, communications, and thermal system operation. Test report shall be submitted.
- B. Site Acceptance Test (SAT) / Commissioning: After installation, a comprehensive commissioning plan shall be executed, including but not limited to:
 - Visual inspection and mechanical completion checklist
 - Insulation resistance and continuity tests
 - Protection device functional tests and settings verification
 - BMS cell/module voltage and temperature verification
 - Full power charge and discharge tests at rated power
 - Energy capacity verification (usable kWh at POI)
 - Round-trip efficiency measurement
 - Grid interconnection and anti-islanding tests per IEEE 1547.1
 - Islanded / backup mode tests (if applicable)
 - Communications and SCADA point-to-point checks



- Fire system functional test
 - Acoustic measurements
- C. All test results shall be documented and submitted. Owner or Owner's representative may witness any or all tests. System shall not be declared commercially operational until SAT is successfully completed and accepted in writing.

3.4 TRAINING

- A. Contractor shall provide on-site training for Owner's operations and maintenance personnel covering:
- System overview and architecture
 - Normal start-up, shutdown, and operating modes
 - HMI / EMS navigation and alarm response
 - Routine maintenance tasks and recommended intervals
 - Emergency procedures and fire response coordination
 - Basic troubleshooting and when to call for manufacturer support
- B. Training duration: minimum one (1) full day. Training materials and videos shall be provided for future reference. Additional training sessions may be requested as an option.

3.5 DOCUMENTATION & CLOSEOUT

- A. Prior to final acceptance, Contractor shall deliver:
- Complete as-built drawings (single-line, layout, wiring, controls)
 - Final settings files for PCS, BMS, EMS, and protective relays
 - Operation & Maintenance manuals (hard copy + searchable PDF)
 - Recommended spare parts list with pricing and lead times
 - Warranty certificates and claim procedures
 - Training attendance records and materials
 - All test reports (FAT, SAT, commissioning)
 - UL listing certificates and UL 9540A summary
 - Interconnection approval documentation from utility
- B. Electronic files shall be provided in native (CAD) and PDF formats. All documentation shall be organized and indexed for easy retrieval.

END OF SECTION 26 33 73

APPENDIX A — MINIMUM PERFORMANCE DATA SHEET

Bidder shall complete all fields below and submit with the proposal. Incomplete data sheets may result in disqualification or clarification requests.

Item	Bidder Response
Bidder / System Integrator Name	
Proposed System Model / Designation	
UL 9540 Listing Number / Status	



UL 9540A Test Report Available? (Yes/No + summary)

Battery Chemistry (LFP / NMC / Other)

Cell Manufacturer & Model

Nameplate DC Energy (kWh)

Usable AC Energy at POI (kWh) — BOL

Rated Continuous AC Power (kW) — charge & discharge

Round-Trip Efficiency AC-AC (incl. aux) at rated power

PCS Manufacturer & Model

PCS Nominal Voltage / Transformer Required?

Grid-Forming Capability? (Yes/No)

Peak / CEC Efficiency of PCS

Thermal Management Type (Air / Liquid)

Fire Detection Method

Fire Suppression Method

Enclosure Rating (NEMA / IP)

Overall Footprint (L x W x H) and Weight

Auxiliary Power Consumption (rated / idle)

Noise Level at 1 m (dBA)

Product Warranty (years)

Capacity Warranty (years / cycles to 70 % SOH)

Expected Calendar Life / Cycle Life

Communications Protocols Supported

Proposed Delivery Lead Time (weeks after NTP)

Proposed Installation Duration (weeks)

O&M / Service Presence in Gulf South Region

List of Reference Projects (similar size, last 5 years)

Deviations from this Specification (attach list)

Authorized Signature: _____ Date: _____



Printed Name / Title: _____

This Specifications Book is issued for competitive bidding. All questions shall be submitted in writing during the bid period. Addenda, if any, will form part of the Contract Documents.

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ATTACHMENT E

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



12 November 2020

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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PREFACE

This document sets out the standard terms and conditions (ST&Cs) applicable to this U.S. Department of Commerce (DOC or Commerce) financial assistance award (hereinafter referred to as the DOC ST&Cs or Standard Terms). A non-Federal entity¹ receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, and any other terms and conditions incorporated into this DOC financial assistance award. In addition, unless otherwise provided by the terms and conditions of this DOC financial assistance award, Subparts A through E of 2 C.F.R. Part 200 and the Standard Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award.²

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: federal laws and regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and specific award conditions. A specific award condition may amend or take precedence over a Standard Term on a case-by-case basis, when indicated by the specific award condition.

Some of the Standard Terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (e.g., SF-424s) or through DOC forms (e.g. Form CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

¹ Note that the OMB Uniform Guidance uses the term “non-Federal entity” to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms “non-Federal entity,” “recipient,” and “subrecipient” consistent with their meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance uses the term “pass-through entity” to refer to a non-Federal entity that makes a subaward. As defined at 2 C.F.R. § 200.1:

“Non-Federal entity” is “a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

“Recipient” is “an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.”

“Subrecipient” is “an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

“Pass-through entity” is “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

² See 2 C.F.R. § 200.1 for the definitions of “foreign public entity” and “foreign organization.”

DOC commenced implementation of the Research Terms and Conditions (RT&Cs) for Federal awards effective October 1, 2017; the RT&Cs address and implement the Uniform Guidance issued by OMB. For awards designated on the Form CD-450 (Financial Assistance Award) as Research, both the DOC ST&Cs and the RT&Cs as implemented by DOC apply to the award. The RT&Cs as well as the DOC implementation statement, agency specific requirements, prior approval matrix, subaward requirements, and national policy requirements are posted on the National Science Foundation's website — <https://www.nsf.gov/awards/managing/rte.jsp>. The DOC ST&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the DOC ST&Cs and the RT&Cs differ in a Research award, the RT&Cs prevail, unless otherwise indicated in a specific award condition.

A. PROGRAMMATIC REQUIREMENTS

.01 Reporting Requirements

a. Recipients must submit all reports as required by DOC, electronically or, if unable to submit electronically, in hard copy, as outlined below and as may be supplemented by the terms and conditions of a specific DOC award.

b. Performance (Technical) Reports. Recipients must submit performance (technical) reports to the Program Officer. Performance (technical) reports should be submitted in the same frequency as the Form SF-425 (Federal Financial Report), unless otherwise directed by the Grants Officer.

1. Performance (technical) reports must contain the information prescribed in 2 C.F.R. § 200.329 (Monitoring and reporting program performance), unless otherwise specified in the award conditions.

2. As appropriate and in accordance with the format provided by the Program Officer (or other OMB-approved information collections, including the Research Program Performance Report [RPPR] as adopted by DOC for use in research awards), recipients are required to relate financial data to the performance accomplishments of this Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance will be measured in a way that will help DOC to improve program outcomes, share lessons learned, and spread the adoption of best or promising practices. As described in 2 C.F.R. § 200.211 (Information contained in a Federal award), DOC will identify the timing and scope of expected performance by the recipient as related to the outcomes intended to be achieved by the Federal program.

3. Recipients (or pass-through entities as applicable) must submit a final performance report within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its final performance report to the pass-through entity within 90 calendar days unless an extension has been granted.

c. **Financial Reports.** In accordance with 2 C.F.R. § 200.328 (Financial reporting), the recipient must submit a Form SF-425 (Federal Financial Report) or any successor form on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports must be submitted to DOC as directed by the Grants Officer, in accordance with the award conditions and are due no later than 30 calendar days following the end of each reporting period. Recipients (or pass-through entities as applicable) must submit a final Form SF-425 within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its financial report to the pass-through entity within 90 calendar days unless an extension has been granted. A recipient may submit a final financial report in lieu of an interim financial report due at the end of the period of performance (e.g., in lieu of submitting a financial report for the last semi-annual or other reporting under an award, a recipient may submit a final (cumulative) financial report covering the entire award period).

d. **Real Property, Tangible Personal Property and Intangible Property Reports and Requests for Dispositions.** Unless otherwise required by the terms and conditions of a DOC financial assistance award, where real property, tangible personal property or intangible property is acquired or improved (in the case of real property or tangible personal property), or produced or acquired (in the case of intangible property), pursuant to a DOC award, non-Federal entities are required to submit the following real property, tangible personal property and intangible property reports (as appropriate):

1. **Real Property Status Reports and Requests for Dispositions:** Non-Federal entities must submit reports using Form SF-429 (Real Property Status Report) or any successor form, including appropriate attachments thereto, at least annually disclosing the status of real property that is Federally-owned property or real property in which the Federal Government retains a Federal Interest, unless the Federal Interest in the real property extends 15 years or longer. In cases where the Federal Interest attached is for a period of 15 years or more, the DOC or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or, the DOC or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). In addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-429, with appropriate attachments, relating to a non-Federal entity's request to acquire, improve or contribute real property under a DOC financial assistance award.

Non-Federal entities wishing to dispose of real property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.311(c). *See also* the real property standards set forth in Section C. of these Standard Terms (Property Standards).

2. **Tangible Personal Property Status Reports and Requests for Dispositions:** DOC or a pass-through entity may also require a non-Federal entity to submit periodic reports using Form SF-428 (Tangible Personal Property Report) or any successor form, including appropriate attachments thereto, concerning tangible personal property that is Federally-owned or tangible personal property in which the Federal Government retains an interest. In

addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-428 in connection with a non-Federal entity's request to dispose of tangible personal property acquired under a DOC financial assistance award. Non-Federal entities wishing to dispose of tangible personal property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.313(e). *See also* the tangible property standards set forth in Section C. of these Standard Terms (Property Standards).

3. Intangible Property Status Reports and Requests for Dispositions: The specific requirements governing the development, reporting, and disposition of rights to intangible property, including inventions and patents resulting from DOC awards, are set forth in 37 C.F.R. Part 401, which is hereby incorporated by reference into this award. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing to the Grants Officer compelling reasons for allowing the submission of paper reports. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 C.F.R. § 200.313(e). *See also* the intangible property standards set forth in Section C. of these Standard Terms (Property Standards).

e. Subawards and Executive Compensation Reports. For reporting requirements on subawards and Executive Compensation, see paragraph G.05.o of these Standard Terms (The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)).

f. Recipient Integrity and Performance Matters. For reporting requirements pertaining to integrity and performance matters, see paragraph G.05.p of these Standard Terms (Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)).

g. Research Performance Progress Reports. All research awards shall submit the Research Performance Progress Report (RPPR) in accordance with instructions set forth in the following link: [RPPR Instructions](#).

.02 Revisions of Program Plans

In accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)), the recipient must obtain prior written approval from the DOC Grants Officer for certain proposed programmatic change requests, unless otherwise provided by the terms and conditions of a DOC award. Requests for prior approval for changes to program plans must be submitted to the Federal Program Officer (or electronically for awards administered through Grants Online). Requests requiring prior DOC approval are not effective unless and until approved in writing by the DOC Grants Officer.

.03 Other Federal Awards with Similar Programmatic Activities

The recipient must immediately provide written notification to the DOC Program Officer and the DOC Grants Officer if, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

.04 Prohibition against Assignment by a Non-Federal Entity

A non-Federal entity must not transfer, pledge, mortgage, assign, encumber or hypothecate a DOC financial assistance award or subaward, or any rights to, interests therein or claims arising thereunder, to any party or parties, including but not limited to banks, trust companies, other financing or financial institutions, or any other public or private organizations or individuals without the express prior written approval of the DOC Grants Officer or the pass-through entity (which, in turn, may need to obtain prior approval from the DOC Grants Officer).

.05 Disclaimer Provisions

a. The United States expressly disclaims all responsibility or liability to the non-Federal entity or third persons (including but not limited to contractors) for the actions of the non-Federal entity or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

b. The acceptance of this award or any subaward by the non-Federal entity does not in any way constitute an agency relationship between the United States and the non-Federal entity or the non-Federal entity's contractors or subcontractors.

.06 Unsatisfactory Performance or Non-Compliance with Award Provisions

a. Failure to perform the work in accordance with the terms of the award and maintain satisfactory performance as determined by DOC may result in the imposition of additional award conditions pursuant to 2 C.F.R. § 200.208 (Specific conditions) or other appropriate enforcement action as specified in 2 C.F.R. § 200.339 (Remedies for noncompliance).

b. Failure to comply with the provisions of an award will be considered grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.339 (Remedies for noncompliance), including but not limited to: the imposition of additional award conditions in accordance with 2 C.F.R. § 200.208 (Specific conditions); temporarily withholding award payments pending the correction of the deficiency; changing the payment method to reimbursement only; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 C.F.R. Parts 180 and 1326; and such other remedies as may be legally available.

c. 2 C.F.R. §§ 200.340 (Termination) through 200.343 (Effects of suspension and termination) apply to an award that is terminated prior to the end of the period of performance

due to the non-federal entity's material failure to comply with the award terms and conditions. In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a non-Federal entity's eligibility for future DOC or Federal awards.

B. FINANCIAL REQUIREMENTS

.01 Financial Management

a. In accordance with 2 C.F.R. § 200.302(a) (Financial Management), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and any other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See also* 2 C.F.R. § 200.450 (Lobbying) for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.

b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b). *See also* 2 C.F.R. §§ 200.334 (Retention requirements for records); 200.335 (Requests for transfer of records); 200.336 (Methods for collection, transmission and storage of information); 200.337 (Access to records); and 200.338 (Restrictions on public access to records).

.02 Award Payments

a. Consistent with 2 C.F.R. § 200.305(a) (Federal payment), for States, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (Rules and Procedures for Efficient Federal-State Funds Transfers) and Treasury Financial Manual Volume I, 4A-2000 (Overall Disbursing Rules for All Federal Agencies).

b. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

1. The Grants Officer determines the appropriate method of payment and, unless otherwise stated in a specific award condition, the advance method of payment must be authorized. Advances must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. Unless otherwise provided by the terms and conditions of a DOC award, non-Federal entities must time advance payment requests so that Federal funds are on hand for a maximum of 30 calendar days before being disbursed by the

non-Federal entity for allowable award costs.

2. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity or if a non-Federal entity otherwise fails to continue to qualify for the advance method of payment, the Grants Officer or the pass-through entity may change the method of payment to reimbursement only.

c. Unless otherwise provided for in the award terms, payments from DOC to recipients under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the recipient's bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. To receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP:

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;
2. Agency Location Code (ALC); and
3. Region Code.

d. Recipients enrolled in the ASAP system do not need to submit a Form SF-270 (Request for Advance or Reimbursement) for payments relating to their award. Awards paid under the ASAP system will contain a specific award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

e. When the Form SF-270 or successor form is used to request payment, the recipient must submit the request no more than monthly, and advances must be approved for periods to cover only expenses reasonably anticipated over the next 30 calendar days. Prior to receiving payments via the Form SF-270, the recipient must complete and submit to the Grants Officer the Form SF-3881 (ACH Vendor Miscellaneous Payment Enrollment Form) or successor form along with the initial Form SF-270. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

f. The Federal award identification number must be included on all payment-related correspondence, information, and forms.

g. Non-Federal entities receiving advance award payments must adhere to the depository requirements set forth in 2 C.F.R. §§ 200.305(b)(7) through (b)(11). Interest amounts up to \$500 per non-Federal entity's fiscal year may be retained by the non-Federal entity for administrative expenses.

.03 Federal and Non-Federal Sharing

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares must be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total approved budget, the Federal share must not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or third-party in-kind contributions, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or third-party in-kind contributions. In any case, the recipient must meet its cost share commitment as set forth in the terms and conditions of the award; failure to do so may result in the assignment of specific award conditions or other further action as specified in Standard Term A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). The non-Federal entity must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits; see Section D of these Standard Terms (Audits), for audit requirements. See 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

.04 Budget Changes and Transfer of Funds among Categories

a. Recipients are required to report deviations from the approved award budget and request prior written approval from DOC in accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)). Requests for such budget changes must be submitted to the Grants Officer (or electronically for awards serviced through Grants Online) who will notify the recipient of the final determination in writing. Requests requiring prior DOC approval do not become effective unless and until approved in writing by the DOC Grants Officer.

b. In accordance with 2 C.F.R. § 200.308(f), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is equal to or less than the simplified acquisition threshold. For awards in which the Federal share of the project exceeds the simplified acquisition threshold, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceeds 10 percent of the total budget as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose is not and will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. See 2 C.F.R. § 200.308 (Revision

of budget and program plans) (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

.05 Program Income

Unless otherwise indicated in the award terms, program income may be used for any required cost sharing or added to the project budget, consistent with 2 C.F.R. § 200.307 (Program income).

.06 Indirect or Facilities and Administrative Costs

a. Indirect costs (or facilities and administration costs (F&A)) for major institutions of higher education and major nonprofit organizations can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

b. Unrecovered indirect costs, including unrecovered indirect costs on cost sharing or matching, may be included as part of cost sharing or matching as allowed under 2 C.F.R. § 200.306(c) (Cost sharing or matching) or the terms and conditions of a DOC award.

c. Cognizant Agency for Indirect (F&A) Costs. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. In accordance with Appendices III – VII to 2 C.F.R. Part 200 the cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. With respect to for-profit organizations, the term cognizant Federal agency generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 C.F.R. § 42.003. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for indirect cost negotiations.

1. General Review Procedures Where DOC is the Cognizant Agency.

i. Within 90 calendar days of the award start date, the recipient must submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow DOC to perform the indirect cost rate proposal review. Below are two sources available for guidance on how to put an indirect cost plan together:

- (A) Department of Labor: <https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm>
or
- (B) Department of the Interior: <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/>.

ii. The recipient may use the rate proposed in the indirect cost plan as a provisional rate until the DOC provides a response to the submitted plan.

iii. The recipient is required to annually submit indirect cost proposals no later than six months after the recipient's fiscal year end, except as otherwise provided by 2 C.F.R. § 200.414(g).

2. When DOC is not the oversight or cognizant Federal agency, the recipient must provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement within 30 calendar days of receipt of a negotiated rate agreement or submission of a negotiated rate proposal.

3. If the recipient is proposing indirect costs as part of a project budget, but is not required to have a negotiated rate agreement pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b (*i.e.*, a governmental department or agency that receives \$35 million or less in direct Federal funding), the recipient may be required to provide the Grants Officer with a copy of its Certificate of Indirect Costs as referenced in 2 C.F.R. Part 200, Appendix VII, Paragraph D.3. or such other documentation, acceptable in form and substance to the Grants Officer, sufficient to confirm that proposed indirect costs are calculated and supported by documentation in accordance with 2 C.F.R. Part 200, Appendix VII. In cases where the DOC is the recipient's cognizant Federal agency, the DOC reserves the right, pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b, to require the recipient to submit its indirect cost rate proposal for review by DOC.

d. If the recipient fails to submit required documentation to DOC within 90 calendar days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient is the lesser of:

1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or

2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, in accordance with 2 C.F.R. 200 Appendix III, C.7, provided that the rate is approved on or before the award end date.

f. In accordance with 2 CFR § 200.414(c)(3), DOC set forth policies, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates. These policies and procedures are applicable to all Federal financial assistance programs awarded and administered by DOC bureaus as Federal awarding agencies and may be found at http://www.osc.doc.gov/oam/grants_management/policy/documents/FAM%202015-02.pdf.

g. In accordance with 2 CFR § 200.414(g), any non-Federal entity that has a negotiated indirect cost rate may apply to the entity's cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

h. In accordance with 2 CFR § 200.414(f), any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in paragraph D.1.b of Appendix VII to 2 CFR Part 200, may elect to charge a de minimis rate of 10 percent of modified total direct costs. No documentation is required to justify the 10 percent de minimis indirect cost rate.

.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance

a. In accordance with 2 C.F.R. § 200.309 (Modifications to Period of Performance) and the terms and conditions of a DOC award, a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance, which is established in the award document. As defined at 2 C.F.R. § 200.1, the "period of performance" means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the Period of Performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period." The period of performance may sometimes be referred to as the project period or award period. This Standard Term is subject to exceptions for allowable costs pertaining to: (i) pre-award costs (*see* 2 C.F.R. § 200.458); (ii) publication and printing costs (*see* 2 C.F.R. § 200.461); and administrative costs incurred relating to the close-out of an award (*see* 2 C.F.R. § 200.344).

b. Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 120 calendar days following the end of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer. A non-Federal entity may request an extension of the 120-day closeout period, as provided in 2 C.F.R. § 200.344 (Closeout).

c. Unless authorized by a specific award condition, any extension of the period of performance may only be authorized by the Grants Officer in writing. This is not a delegable authority. Verbal or written assurances of funding from anyone other than the Grants Officer does not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.

d. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

.08 Tax Refunds

The non-Federal entity shall contact the Grants Officer immediately upon receipt of the refund of any taxes, including but not limited to Federal Insurance Contributions Act (FICA) taxes, Federal Unemployment Tax Act (FUTA) taxes, or Value Added Taxes (VAT) that were allowed as charges to a DOC award, regardless of whether such refunds are received by the non-Federal entity during or after the period of performance. The Grants Officer will provide written disposition instructions to the non-Federal entity, which may include the refunded taxes being credited to the award as either a cost reduction or a cash refund, or may allow the non-Federal entity to use such refunds for approved activities and costs under a DOC award. *See* 2 C.F.R. § 200.470 (Taxes (including Value Added Tax)).

.09 Internal Controls

Each recipient must comply with standards for internal controls described at 2 C.F.R. § 200.303 (Internal controls). The “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States referenced in § 200.303 are available online at <http://www.gao.gov/assets/80/76455.pdf> and the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) is available online at [Internal Control Guidance](#).

C. PROPERTY STANDARDS

.01 Standards

Each non-Federal entity must comply with the Property Standards set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship).

.02 Real and Personal Property

a. In accordance with 2 C.F.R. § 200.316 (Property trust relationship), real property, equipment, and other personal property 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. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the non-Federal entity must comply with all use and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

b. The Grants Officer may require a non-Federal entity to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition

requirements apply to the property. The statement of interest, financing statement (Form UCC 1), lien, mortgage or other public notice must be acceptable in form and substance to the DOC and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a subrecipient), authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

.03 Intellectual Property Rights

a. General. The rights to any work or other intangible property produced or acquired under a Federal award are determined by 2 C.F.R. § 200.315 (Intangible property). The non-Federal entity owns any work produced or purchased under a Federal award subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a non-Federal entity under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq.*, and modified by E.O. 12591 (52 FR 13414), as amended by E.O. 12618 (52 FR 48661). 35 U.S.C. § 201(h) defines "small business firm" as "a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration." Section 1(b)(4) of E.O. 12591 extended the Bayh-Dole Act to non-Federal entities "regardless of size" to the extent permitted by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 C.F.R. Part 401, which implements 35 U.S.C. 202 through 204 and includes standard patent rights clauses in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

The Bayh-Dole regulations set forth in 37 C.F.R. parts 401 and 404 were amended by 83 FR 15954, with an effective date of May 14, 2018 (Amended Bayh-Dole Regulations). The Amended Bayh-Dole Regulations apply to all new financial assistance awards issued on or after May 14, 2018. The Amended Bayh-Dole Regulations do not apply to financial assistance awards issued prior to May 14, 2018, including amendments made to such awards, unless an award amendment includes a specific condition incorporating the Amended Bayh-Dole Regulations into the terms and conditions of the subject award.

1. **Ownership.** A non-Federal entity may have rights to inventions in accordance with 37 C.F.R. Part 401. These requirements are technical in nature and non-Federal entities are encouraged to consult with their Intellectual Property counsel to ensure the proper interpretation of and adherence to the ownership rules. Unresolved questions pertaining to a non-Federal entities' ownership rights may further be addressed to the Grants Officer.

2. **Responsibilities - iEdison.** The non-Federal entity must comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401, including the standard patent rights clause in 37 C.F.R. § 401.14. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing the Grants Officer with compelling reasons for allowing the submission of paper reports.

c. **Patent Notification Procedures.** Pursuant to E.O. 12889 (58 FR 69681), the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or a non-Federal entity, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the non-Federal entity uses or has used patented technology under this award without a license or permission from the owner, the non-Federal entity must notify the Grants Officer.

This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.

d. A non-Federal entity may copyright any work produced under a Federal award, subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and non-Federal entity employees may be copyrighted, but only the part of such works authored by the non-Federal entity is protectable in the United States because, under 17 U.S.C. § 105, copyright protection is not available within the United States for any work of the United States Government. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the non-Federal entity to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.

e. **Freedom of Information Act (FOIA).** In response to a FOIA request for research data relating to published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the DOC will request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, must have the right to access any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity's personnel for interview and discussion related to such documents. See 2 C.F.R. § 200.337 (Access to records). When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

.01 Organization-Wide, Program-Specific, and Project Audits

a. A recipient must, within 90 days of the end of its fiscal year, notify the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, that the recipient expended during its fiscal year.

b. Recipients that are subject to the provisions of Subpart F of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards during their fiscal year must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>). In accordance with 2 C.F.R. § 200.425 (Audit services), the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.

c. Unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities, foreign public entities and foreign organizations) and that expend \$750,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 C.F.R. Part 200 and that expend less than \$750,000 in DOC funds in a given fiscal year are

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

e. In accordance with 2 C.F.R. § 200.332(d)(3), pass-through entities are responsible for issuing a management decision for applicable audit findings pertaining only to the Federal award provided by the pass-through entity to a subrecipient.

.02 Audit Resolution Process

a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. A recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. The recipient has 30 calendar days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.

2. The recipient has 30 calendar days from the date of the transmittal of the final audit report to submit written comments and documentary evidence.

3. The DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 calendar days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.

4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of applicable interest, penalties and administrative fees on the debt in accordance with 15 C.F.R. Part 19. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively.

5. The DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed to the Federal Government

a. The non-Federal entity must promptly pay any debts determined to be owed to the Federal Government. Any funds paid to a non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 C.F.R. § 200.346 (Collection of amounts due), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:

1. Making an administrative offset against other requests for reimbursement;
2. Withholding advance payments otherwise due to the non-Federal entity; or
3. Taking any other action permitted by Federal statute.

The foregoing does not waive any claim on a debt that DOC may have against another entity, and all rights and remedies to pursue other parties are preserved.

b. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 2 C.F.R. § 200.346 (Collection of amounts due) and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government must result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is delinquent for more than 120 calendar days to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as cross-servicing, pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12, and 15 C.F.R. § 19.9. DOC may also take further action as specified in DOC ST&C A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). Funds for payment of a debt must not come from other Federally-sponsored programs, and the DOC may conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt.

.02 Late Payment Charges

a. Interest will be assessed on the delinquent debt in accordance with section 11 of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3717(a)). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate must remain fixed for the duration of the indebtedness.

b. Penalties will accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, will be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived by DOC, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

F. CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS

.01 Conflict of Interest and Code of Conduct

a. DOC Conflict of Interest Policy. In accordance with 2 C.F.R. § 200.112 (Conflict of interest), the non-Federal entity must disclose in writing any potential conflict of interest to the DOC or pass-through entity. In addition, a non-Federal entity will establish and maintain written standards of conduct that include safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of an award. It is the DOC's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with DOC financial assistance awards.

b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render

impartial assistance, services or advice to the recipient, a participant in the project or to the Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the DOC Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a non-Federal entity, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

c. Procurement-related conflict of interest. In accordance with 2 C.F.R. § 200.318 (General procurement standards), non-Federal entities must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. See paragraph F.04 of these Standard Terms (Requirements for Procurements).

.02 Nonprocurement Debarment and Suspension

Non-Federal entities must comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

.03 Requirements for Subawards

a. The recipient or pass-through entity must require all subrecipients, including lower tier subrecipients, to comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions set forth herein. See 2 C.F.R. § 200.101(b)(2) (Applicability to different types of Federal awards), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§ 200.331-333 (Subrecipient monitoring and management).

b. The recipient or pass-through entity may have more restrictive policies for the RTC *waived* prior approvals (no-cost extensions, re-budgeting, etc.) for their subaward recipients. Such restrictive policies must be addressed in their subaward agreements and in accordance with §200.331.

.04 Requirements for Procurements

a. States. Pursuant to 2 C.F.R. § 200.317 (Procurements by states), when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must comply with 2 C.F.R. §§ 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), 200.322 (Domestic preferences for procurements), and

200.323 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.327 (Contract provisions).

b. **Other Non-Federal Entities.** All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in 2 C.F.R. §§ 200.318 (General procurement standards) through 200.327 (Contract provisions) which include the requirement that non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

.05 Whistleblower Protections

This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

.06 Small Businesses, Minority Business Enterprises and Women's Business Enterprises

In accordance with 2 C.F.R. § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), the recipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. DOC encourages non-Federal entities to use small

businesses, minority business enterprises and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency within the DOC will assist non-Federal entities in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA's website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230
(202) 482-0101

G. NATIONAL POLICY REQUIREMENTS

.01 United States Laws and Regulations

This award is subject to the laws and regulations of the United States. The recipient must comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

.02 Non-Discrimination Requirements

No person in the United States may, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

a. Statutory Provisions

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the

basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 C.F.R. § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and

6. Any other applicable non-discrimination law(s).

b. Other Provisions

1. Parts II and III of E.O. 11246 (Equal Employment Opportunity, 30 FR 12319),³ which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).

2. E.O. 13166 (65 FR 50121, Improving Access to Services for Persons with Limited English Proficiency), requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.

3. In accordance with E.O. 13798 and Office of Management and Budget, M-20-09 – Guidance Regarding Federal Grants, states or other public grantees may not condition sub-awards of Federal grant money in a manner that would disadvantage grant applicants based on their religious character.

³ As amended by E.O. 11375 (32 FR 14303), E.O. 11478 (34 FR 12985), E.O. 12086 (43 FR 46501), E.O. 12107 (44 FR 1055), E.O. 13279 (67 FR 77141), E.O. 13665 (79 FR 20749), and E.O. 13672 (79 FR 42971).

c. Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion, "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

.03 LOBBYING RESTRICTIONS

a. Statutory Provisions

Non-Federal entities must comply with 2 C.F.R. § 200.450 (Lobbying), which incorporates the provisions of 31 U.S.C. § 1352; and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with the DOC regulations published at 15 C.F.R. Part 28, which implement the New Restrictions on Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award and require the disclosure of the use of non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. See 2 C.F.R. § 200.450(b) and (c).

b. Disclosure of Lobbying Activities

Any recipient that receives more than \$100,000 in Federal funding and conducts lobbying with non-federal funds relating to a covered Federal action must submit a completed Form SF-LLL (Disclosure of Lobbying Activities). The Form SF-LLL must be submitted within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit any required SF-LLL forms, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

.04 Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under

the following statutes and E.O.s and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

a. The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any direct, indirect or cumulative impact an award will have on the quality of the human environment and assist the agency in complying with NEPA. Non-Federal entities may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

b. The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*)

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation (ACHP) implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally-recognized Indian Tribes, Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Non-Federal entities are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Non-Federal entities may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to

submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, non-Federal entities are required to assist the DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 *et seq.*, formerly 16 U.S.C. § 469a-1 *et seq.*); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

c. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to decide whether there is an alternative to minimize any potential harm.

d. Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans")

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and E.O. 11738 (38 FR 25161), and must not use a facility on the Excluded Parties List (EPL) (located on the System for Award Management (SAM) website, SAM.gov) in performing any award that is nonexempt under 2 C.F.R. § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPL or knows that the facility has been recommended to be placed on the EPL.

e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 *et seq.*)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 C.F.R. § 200.447(a), the cost of required flood insurance is an allowable expense, if it is reflected in the approved project budget.

f. The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*)

Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*)

Funded projects must be consistent with a coastal State's approved management program for the coastal zone.

h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 *et seq.*)

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 *et seq.*)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

j. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f *et seq.*)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer which threatens public health.

k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 *note et seq.*)

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

m. Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations")

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

n. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)

Non-Federal entities must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency

procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

o. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)

CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

p. Rivers and Harbors Act (33 U.S.C. § 407)

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

q. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

r. Executive Order 13112 (Invasive Species, February 3, 1999)

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

s. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*)

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S.

Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are "proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified" by any agency under a Federal permit or license.

.05 OTHER NATIONAL POLICY REQUIREMENTS

a. Buy-American Preferences

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients of covered programs (as defined in Executive Order 13858, 31 January 2019, and 2 C.F.R. §200.322 (Domestic preferences for procurements)) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under this Award.

b. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States must be subject to imprisonment of not more than five years and must be subject to a fine in the amount provided by 18 U.S.C. § 287.
3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
4. The Copeland Anti-Kickback Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland Anti-Kickback Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.
5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and implementing regulations issued at 15 C.F.R. Part 11, which provides for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

6. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.

7. To ensure compliance with Federal law pertaining to financial assistance awards, an authorized representative of a non-Federal entity may be required to periodically provide certain certifications to the DOC regarding Federal felony and Federal criminal tax convictions, unpaid federal tax assessments, delinquent Federal tax returns and such other certifications that may be required by Federal law.

c. Drug-Free Workplace

The non-Federal entity must comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 2 C.F.R. Part 1329 (Requirements for Drug-Free Workplace (Financial Assistance)), which require that the non-Federal entity take certain actions to provide a drug-free workplace.

d. Foreign Travel

1. Each non-Federal entity must comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.

2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable or use of U.S. flag air carrier service will not accomplish the agency's mission.

3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA [website](#). Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's [website](#).

4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the non-Federal entity must receive prior approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates

of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer must make the final determination and notify the non-Federal entity in writing (which may be done through the recipient in the case of subrecipient travel). Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which any non-Federal entity improperly used a foreign air carrier.

Note: When using code-sharing flights (two or more airlines having flight numbers assigned to the same flight) involving U.S. flag carriers and non-U.S. flag carriers, the airline symbol and flight number of the U.S. flag carrier must be used on the ticket to qualify as a U.S. flag carrier (e.g. "*Delta Airlines Flight XXXX, operated by KLM*"). Conversely, if the ticket shows "*[Foreign Air Carrier] XXX, operated by Delta*," that travel is using a foreign air carrier and is subject to the Fly America Act and must receive prior approval from the Grants Officer as outlined in paragraph G.05.d.4.

e. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

f. Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies

1. Use of award funds (Federal or non-Federal) or the non-Federal entity's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from non-Federal entities regardless of the source. Therefore, before award funds may be used by Federal employees, non-Federal entities must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing (generally through the recipient) of the final determination.

2. A non-Federal entity or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

g. Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (White House Initiative on Educational Excellence for Hispanics) (75 FR 65417), 13592 (Improving American Indian and Alaska Native

Educational Opportunities and Strengthening Tribal Colleges and Universities) (76 FR 76603), and 13779 (White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities) (82 FR 12499), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC's goals include achieving full participation of MSIs to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and non-Federal entities to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

h. Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

i. Research Involving Human Subjects

1. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27 (Protection of Human Subjects). No research involving human subjects is permitted under this award unless expressly authorized by specific award condition, or otherwise in writing by the Grants Officer.
2. Federal policy defines a human subject as a living individual about whom an investigator (whether professional or student) conducting research (1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

3. DOC regulations at 15 C.F.R. Part 27 require that non-Federal entities maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity (generally through the recipient) must submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. As applicable, this documentation must include:

- i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency guidelines (*see also* 15 C.F.R. § 27.103);
- ii. Documentation to support an exemption for an activity in the project under 15 C.F.R. § 27.104(d);
- iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;
- iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and
- v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 C.F.R. § 27.118, if research involving human subjects is proposed after an award is made, the non-Federal entity must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

j. Care and Use of Live Vertebrate Animals

Non-Federal entities must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 C.F.R. Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

k. Management and Access to Data and Publications

1. In General. The recipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients, may be used by the DOC in conducting reviews and evaluations of its financial assistance programs. For this purpose, recipient information and data may be accessed, reviewed and evaluated by DOC employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of who enter into appropriate or are otherwise subject to confidentiality and nondisclosure agreements covering the use of such information. Recipients are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with DOC and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), recipients are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained relating to a DOC financial assistance award.

2. Scientific Data. Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

3. Publications, Videos, and Acknowledgment of Sponsorship.

i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (e.g., scientific research). Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

ii. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.

iii. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.

iv. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do

not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

l. Homeland Security Presidential Directive

If the performance of this DOC financial assistance award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term "routine access" is defined as more than 180 calendar days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award must comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors), Federal Information Processing Standard (FIPS) PUB 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient must insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

The subrecipient or contractor must comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

The subrecipient or contractor must account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.

m. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

1. This clause applies to the extent that this financial assistance award encompasses activities that involve export-controlled items.

2. In performing this financial assistance award, a non-Federal entity may participate in activities involving items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The non-Federal entity must establish and maintain effective export compliance procedures at DOC and non-DOC facilities, including facilities located abroad, throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate restrictions on export-controlled items, to guard against any unauthorized exports, including in the form of releases or transfers to foreign nationals. Such releases or transfers may occur through visual inspection, including technology transmitted electronically, and oral or written communications.

3. Definitions

- i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.
 - ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 C.F.R. § 734.13(a)(2) & (b)). A release may take the form of visual inspection or oral or written exchange of information. *See* 15 C.F.R. § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. *See* 15 C.F.R. § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. *See* 15 C.F.R. § 734.15(b).
4. The non-Federal entity must secure all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that the export of such items, including in the form of release or transfer to foreign persons, is prevented, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.
5. As applicable, non-Federal entity personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items from unauthorized export.

6. To the extent the non-Federal entity wishes to release or transfer export-controlled items to foreign persons, the non-Federal entity will be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports. Failure to obtain any export licenses required under the EAR may subject the non-Federal entity to administrative or criminal enforcement. See 15 C.F.R. part 764.
7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.
8. Compliance with this term will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports and re-exports of defense articles and services subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including the release of defense articles to foreign persons in the United States and abroad.
9. The non-Federal entity must include the provisions contained in this term in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve research or other activities that implicate export-controlled items.

n. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if any non-Federal entity engages in certain activities related to trafficking in persons. The DOC hereby incorporates the following award term required by 2 C.F.R. § 175.15(b):

Trafficking in persons.

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;***
- ii. Procure a commercial sex act during the period of time that the award is in effect; or***
- iii. Use forced labor in the performance of the award or subawards under the award.***

2. *We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —*

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or*
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension).*

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or*
- 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—*
 - i. Associated with performance under this award; or*
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326, (Nonprocurement Debarment and Suspension).*

c. Provisions applicable to any recipient.

- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.*
- 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:*
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and*
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.*

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25;

ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b); and (B) A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

o. The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)

1. **Reporting Subawards and Executive Compensation.** Under FFATA, recipients of financial assistance awards of \$30,000 or more are required to report periodically on executive compensation and subawards, as described in the following term from 2 C.F.R. Part 170, Appendix A, which is incorporated into this award:

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 equals or exceeds \$30,000 in Federal funds for a subaward

to a non-Federal entity or Federal agency (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 for non-Federal entities.

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 Federal award equals or exceeds \$30,000 as defined in 2 C.F.R. § 170.320;

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 C.F.R. § 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 C.F.R. § 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 found at the System for Award Management (SAM) website located at <https://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 non-Federal entity 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 C.F.R. § 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/execomp.htm>).

See also 2 C.F.R. § 200.300(b).

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. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

2. Non-Federal entity means all of the following, as defined in 2 C.F.R. 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; and,*
- iv. A domestic or foreign for-profit organization.*

3. Executive means officers, managing partners, or any other employees in management positions.

4. 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 2 C.F.R. § 200.331).*
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.*

5. Subrecipient means a non-Federal entity or Federal agency 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.*

6. 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 C.F.R. § 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.*

2. **System for Award Management (SAM) and Universal Identifier Requirements** -- as described in 2 C.F.R. Part 25, Appendix A, which is incorporated into this award:

System for Award Management (SAM) and Universal Identifier Requirements

a. ***Requirement for System for Award Management.*** *Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.*

b. ***Requirement for Unique Entity Identifier.*** *If you are authorized to make subawards under this Federal award, you:*

- 1. *Must notify potential subrecipients that no entity (see definition in paragraph c of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.*
- 2. *May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. 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. *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 C.F.R. § 200.1 and also includes all of the following, for purposes of this part:*

- i. *A foreign organization;*
- ii. *A foreign public entity;*
- iii. *A domestic for-profit organization; and*
- iv. *A Federal agency.*

4. *Subaward has the meaning given in 2 C.F.R. § 200.1.*

5. *Subrecipient has the meaning given in 2 C.F.R. § 200.1.*

See also 2 C.F.R. § 200.300(b).

p. Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)

Reporting of Matters Related to Recipient Integrity and Performance

1. **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 (FAPIS)) 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.

2. **Proceedings About Which You Must Report.** Submit the information required about each proceeding that:

- i. **Is relating to the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;**
- ii. **Reached its final disposition during the most recent five-year period; and**

iii. 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.

3. 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.

4. Reporting Frequency. During any period 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.

5. Definitions. For purposes of this award term and condition:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature 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 inspection of deliverables.

ii. 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.

iii. 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 exercised.

q. Never Contract with the Enemy (2 C.F.R Part 183; 2 C.F.R. § 200.215)

Under 2 C.F.R. § 200.215 (Never contract with the enemy) Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 C.F.R. Part 183. These regulations affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

1. **Applicability.** This term applies only to recipients of covered grants or cooperative agreements, as defined in 2 C.F.R. § 183.35 Definitions.

2. **Requirements.** As applicable, recipients must fulfill the requirements as described in the following terms from 2 C.F.R. Part 183, Appendix A, which is incorporated into this award:

a. Term 1. Prohibition on Providing Funds to the Enemy.

i. The recipient must—

- i. *Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities; which must be completed through 2 CFR Part 180.300 prior to issuing a subaward or contract and;*
- ii. *Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.*

2. *The recipient may include the substance of this clause, including this paragraph (1), in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

3. *The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (1) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities*

b. Term 2. Additional Access to Recipient Records.

1. *In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations*

2. *The substance of this clause, including this paragraph (2), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas;*

r. Prohibition on certain telecommunications and video surveillance services or equipment (Public Law 115-232, section 889; 2 C.F.R. § 200.216)

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant 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.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

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

(d) See also §200.471.

s. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for specific grant or cooperative agreement obligations, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in grant or cooperative agreement administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

3. The ASAP system should remain operational during a government shutdown. Non-Federal entities that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown (see section B.02.b.1 of these terms).