

# EPA Solicitation Clauses

Except as noted all clauses apply to every award and/or solicitation. Questions about the applicability of any of these clauses should be raised to the EPA contact identified in the solicitation.

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## Section III

### a. Insular Areas / Omnibus Territories Act Cost Share Waiver (Where Applicable)

For grant solicitations under programs that (1) the Insular Areas (the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands) are eligible entities for, and (2) include a mandatory matching or cost sharing requirement, cost sharing and matching requirements under \$200,000 for Insular Area applicants (the U.S. Virgin Islands, American Samoa, Guam and the Commonwealth of the Northern Mariana Islands) are waived as a matter of law as authorized by the Omnibus Territories Act , 48 U.S.C. Section 1469a. Insular Area applicants with applications that will require a cost share of \$200,000 or more are advised to contact the point of contact listed in Section VII of the solicitation to determine if cost share requirements will be waived in whole or in part.

## Section IV

### a. Confidential Business Information

EPA recommends that you do not include confidential business information (CBI) in your application. However, if CBI is included, it will be treated in accordance with [40 CFR 2.203](#). Applicants must clearly indicate which portion(s) of their application they are claiming as CBI. EPA will evaluate such claims in accordance with [40 CFR Part 2](#). If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by [40 CFR 2.204\(c\)\(2\)](#) prior to disclosure under the Freedom of Information Act prior to or after selections are made.

### b. Pre-application/Application Assistance and Communications

In accordance with EPA's Assistance Agreement Competition Policy (EPA Order 5700.5A1), EPA staff will not meet with individual applicants to discuss draft applications, provide informal comments on draft applications, or provide advice to applicants on how to respond to ranking criteria. Applicants are responsible for the contents of their applications/applications. However, consistent with the provisions in the announcement, EPA will respond to questions from individual applicants regarding threshold eligibility criteria, administrative issues related to the submission of the application, and requests for clarification about any of the language or provisions in the announcement. Please note that applicants should raise any questions they may have about the solicitation language to the contact identified in Section VII as soon as possible so that any questions about the solicitation language may be resolved prior to submitting an application.

In addition, if necessary, EPA may clarify threshold eligibility issues with applicants prior to making an eligibility determination.

c. Management Fees

When formulating budgets for applications, applicants must not include management fees or similar charges in excess of the direct costs and indirect costs at the rate approved by the applicants cognizant audit agency, or at the rate provided for by the terms of the agreement negotiated with EPA. The term management fees or similar charges refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

d. Contracts and Subawards:

**a. Can funding be used for the applicant to make subawards, acquire contract services, or fund partnerships?**

EPA awards funds to one eligible applicant as the recipient even if other eligible applicants are named as partners or co-applicants or members of a coalition or consortium. The recipient is accountable to EPA for the proper expenditure of funds.

Funding may be used to provide subawards of financial assistance, which includes using subawards to fund partnerships, provided the recipient complies with applicable requirements for subawards including those contained in [2 CFR Part 200](#) and [EPA's Subaward Policy](#). EPA has also posted [Additional Resources](#) on Subawards for applicants to consult.

Applicants must compete contracts for services and products, including consultant contracts, and conduct cost and price analyses, to the extent required by the procurement provisions of the regulations at [2 CFR Part 200](#). Applicants are not required to identify subrecipients and/or contractors (including consultants) in their application. However, if they do, the fact that an applicant selected for award has named a specific subrecipient, contractor, or consultant in the application EPA selects for funding does not relieve the applicant of its obligations to comply with subaward and/or competitive procurement requirements as appropriate. Please note that applicants may not award sole source contracts to consulting, engineering or other firms assisting applicants with the application solely based on the firm's role in preparing the application. For additional guidance applicants should review EPA's [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).

Successful applicants cannot use subawards to avoid requirements in EPA grant regulations for competitive procurement by using these instruments to acquire commercial services or products from for-profit organizations to carry out its assistance agreement. The nature of the transaction between the recipient and the subrecipient must be consistent with the standards for distinguishing between vendor transactions and subrecipient assistance found at [2 CFR 200.331](#), the definitions of Subaward and Subrecipient at [2 CFR 200.1](#),

and [Appendix A to EPA's Subaward Policy](#). EPA will not be a party to these transactions. Applicants acquiring commercial goods or services must comply with the competitive procurement requirements in [2 CFR 200.319](#) and [2 CFR 200.320](#) and cannot use a subaward as the funding mechanism.

**b. How will an applicant's proposed subrecipients and contractors be considered during the evaluation process described in Section V of the announcement?**

Section V of the announcement describes the evaluation criteria and evaluation process that will be used by EPA to make selections under this announcement. During this evaluation, except for those criteria that relate to the applicant's own qualifications, past performance, and reporting history, the review panel will consider, as appropriate and relevant, the qualifications, expertise, and experience of:

- (i) an applicant's named subrecipients identified in the application if the applicant demonstrates in the application that if it receives an award that the subaward will be properly awarded consistent with the applicable regulations in [2 CFR Part 200](#). For example, applicants must not use subawards to obtain commercial services or products from for profit firms or individual consultants.
- (ii) an applicant's named contractor(s), including consultants, identified in the application if the applicant demonstrates in its application that the contractor(s) was selected in compliance with the competitive procurement requirements in [2 CFR 200.319](#) and [2 CFR 200.320](#). For example, an applicant must demonstrate that it selected the contractor(s) competitively or that a proper non-competitive sole-source award consistent with the regulations will be made to the contractor(s), that efforts were made to provide small and disadvantaged businesses with opportunities to compete as provided in [40 CFR 33.301](#), and that some form of cost or price analysis was conducted. EPA may not accept sole source justifications for contracts for services or products that are otherwise readily available in the commercial marketplace.

EPA will not consider the qualifications, experience, and expertise of named subrecipients and/or named contractor(s) during the application evaluation process unless the applicant complies with these requirements. For additional guidance applicants should review EPA's [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).

**e. Duplicate Funding**

Generally, applicants are not prohibited from submitting the same or virtually the same competitive or non-competitive application(s) for funding to EPA and/or other federal agencies and entities. However, if an applicant does so, and the application (or one virtually the same) that was submitted under this solicitation is also selected for funding by EPA and/or other federal agencies and entities competitively or non-competitively, that may affect their ability to receive an award under this competition for that application. Applicants should also be aware that if they use a contractor to prepare their application or portions of their application under this solicitation that contractor may also be assisting other applicants with their applications

that could result in identical or virtually identical submissions to EPA. In such cases, the agency reserves the right to decide which, if any, of the applications to fund.

f. System for Award Management (SAM) Unique Entity Identifier Requirements

Unless exempt from these requirements under OMB guidance at [2 CFR Part 25](#) (e.g., individuals), applicants must:

1. Be registered in SAM prior to submitting an application or plan under this announcement. SAM information can be found at [Sam.gov](#)
2. Maintain an active SAM registration with current information including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and
3. Provide its unique entity identifier in each application or plan it submits to the Federal awarding agency (e.g., provide its DUNS number in each application it submits to the Agency). *Unique entity identifier* means the identifier required for SAM registration to uniquely identify business entities. Applicants can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711, or visiting the D&B website.

EPA may not make an award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant fails to fully comply with these requirements by the time EPA is ready to make an award, EPA may determine that the applicant is not qualified to receive an award and use that determination as a basis to make an award to another applicant.

To learn more about SAM, go to [SAM.gov](#).

g. Restrictions on Use of Federal Funds

All costs incurred under this program must be allowable under [2 CFR Part 200 Subpart E](#). In accordance with applicable law, regulation, and policy, any recipient of funding must agree to comply with restrictions on using assistance funds for unauthorized lobbying, fund-raising, or political activities (i.e., lobbying members of Congress or lobbying for other federal grants, cooperative agreements, or contracts). See e.g. [2 CFR 200.450](#). Funds generally cannot be used to pay for travel by federal agency staff. Proposed project activities must also comply with all state and federal regulations applicable to the project area. The applicant must also review the solicitation for any other programmatic funding restrictions applicable to this program. If awarded funding, the recipient must refer to the terms and conditions of its award for other funding restrictions applicable to its award. It is the responsibility of the recipient to ensure compliance with these requirements. In addition, please see [2 CFR 200](#) for information on pre-

award costs.

#### h. Intergovernmental Review Act

Executive Order 12372, Intergovernmental Review of Federal Programs, may be applicable to awards resulting from this announcement. EPA implemented the Executive Order in 40 CFR Part 29. EPA may require applicants selected for funding to provide a copy of their application to their State Point of Contact (SPOC) for review as provided at 40 CFR 29.7 and 40 CFR 29.8. The SPOC list can be found on the webpage below.

- [Office of Federal Financial Management Resources and Other Information](#)

EPA may require successful applicants from states that do not have a SPOC to provide a copy of their application for review to directly affected state, area-wide, regional and local government entities as provided at 40 CFR 29.7 and 40 CFR 29.8. These reviews are not required before submitting an application. Only applicants that EPA selects for funding under this announcement are subject to the Intergovernmental Review requirement.

#### i. No Awards

The Agency reserves the right to make no awards under this competition.

#### j. Statutory Prohibition on Certain Telecommunications and Video Surveillance Equipment or Services

Unless an exception or waiver applies, Section 889 of the National Defense Authorization Act for Fiscal Year 2019, Public Law 115-232 (section 889), prohibits the use of Federal funds by recipients and subrecipients to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Section 889 also prohibits the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service 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. The Office of Management and Budget’s implementing regulations at [2 CFR 200.216](#) provide additional information on the prohibitions in section 889. These regulations state, among other things, that “[A]s 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).” Other prohibitions may also apply. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management](#) exclusion list.

## Section V

a. Reporting and Use of Information Concerning Recipient Integrity and Performance: For any award under this solicitation where EPA anticipates that the total Federal share will be greater than the simplified acquisition threshold over the period of performance (see [2 CFR §200.1](#)-as of August 19, 2020 the threshold is \$250,000 but it is periodically adjusted), applicants are notified:

- i. That EPA, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);
- ii. That an applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;
- iii. That EPA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in [2 CFR §200.206](#).

## Section VI Clauses

a. Human Subjects (if applicable):

A grant applicant must agree to meet all EPA requirements for studies using human subjects prior to implementing any work with these subjects. These requirements are given in 40 CFR Part 26. Studies involving intentional exposure of human subjects who are children or pregnant or nursing women are prohibited by Subpart B of 40 CFR Part 26. For observational studies involving children or pregnant women and fetuses please refer to Subparts C & D of 40 CFR Part 26. U.S. Department of Health and Human Services regulations at 45 CFR Part 46.101(e) have long required "... **compliance with pertinent Federal laws or regulations which provide additional protection for human subjects.**" EPA's regulation 40 CFR Part 26 is such a pertinent Federal regulation. Therefore, the applicant's Institutional Review Board (IRB) approval must state that the applicant's study meets the EPA's regulations at 40 CFR Part 26. No work involving human subjects, including recruiting, may be initiated before the EPA has received a copy of the applicant's IRB approval of the project and the EPA has also provided approval. Where human subjects are involved in the research, the recipient must provide evidence of subsequent IRB reviews, including amendments or minor changes of protocol, as part of progress reports.



Guidance and training for investigators conducting EPA-funded research involving human subjects may be obtained here:

[Basic Information about Human Subjects Research](#)  
[Electronic Code of Federal Regulations](#)

b. Animal Welfare (if applicable):

A grant recipient must agree to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 U.S.C. 2131-2159. The recipient must also agree to abide by the **U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training**. (50 Federal Register 20864-20865 (May 20, 1985))

\*This clause applies if a research facility (defined as any school (except elementary or secondary), institution, organization or person) receives funds under a grant from a federal agency for the purpose of carrying out research, tests, or experiments involving animals.

c. Data Access and Information Release:

EPA has the right to obtain, reproduce, publish, or otherwise use the data produced under the awards to be made under this solicitation and authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes under [2 CFR 200.315](#). In addition, pursuant to [2 CFR 200.315\(e\)](#), if EPA receives a Freedom of Information Act request for research data that (1) relates to published research findings produced under an EPA award and (2) was used by the federal government in developing an agency action that has the force and effect of law, then EPA shall request, and the award recipient shall provide, within a reasonable time, the research data so that it may be made available to the public through procedures established under the FOIA.

d. Nonprofit Administrative Capability Clause (applicable to non-profit awards over \$200,000)

Non-profit applicants that are recommended for funding under this announcement are subject to pre-award administrative capability reviews consistent with Section 8b, 8c, and 9d of [EPA Order 5700.8: EPA's Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards](#). In addition, non-profit applicants selected for awards over \$200,000 may be required to fill out and submit to the grants management office [EPA Form 6600.09, United States Environmental Protection Agency Administrative Capability Questionnaire](#) with supporting documents as required in EPA Order 5700.8.

e. Final Application Submission

Generally, following EPA's evaluation of applications, all applicants will be notified regarding their status. Final applications and forms will be requested, as necessary, from those eligible entities whose application has been successfully evaluated and preliminarily recommended for award. Those entities will be provided with instructions and a due date for submittal of the final application package.

f. Subaward and Executive Compensation Reporting

Applicants must ensure that they have the necessary processes and systems in place to comply with the sub-award and executive total compensation reporting requirements established under OMB guidance at [2 CFR Part 170](#), unless they qualify for an exception from the requirements, should they be selected for funding.

g. Unliquidated Obligations

An applicant that receives an award under this announcement is expected to manage assistance agreement funds efficiently and effectively and make sufficient progress towards completing the project activities described in the work-plan in a timely manner. The assistance agreement will include terms/conditions implementing this requirement.

h. Website References in Solicitations

Any non-federal websites or website links included in this solicitation are provided for application preparation and/or informational purposes only. EPA does not endorse any of these entities or their services. In addition, EPA does not guarantee that any linked, external websites referenced in this solicitation comply with Section 508 (Accessibility Requirements) of the Rehabilitation Act.

i. Unpaid Federal Tax Liabilities and Felony Convictions for Non-Profit and For-Profit Organizations (if applicable):

Awards made under this announcement are subject to provisions contained in an appropriations act(s) that prohibits EPA from entering into a contract, memorandum of understanding, or cooperative agreement with, making a grant to, or providing a loan or loan guarantee to any for-profit or non-profit corporation: (1) subject to any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; or (2) that was convicted of a felony criminal conviction under any federal law within 24 months preceding the award, unless EPA has considered suspension or debarment of the corporation, based on these tax liabilities or convictions, and determined that such action is not necessary to protect the government's interests. Based on application of these provisions, non-profit or for-profit corporations that are covered by these prohibitions may be ineligible to receive an award under this announcement. Questions about this provision should be raised to the point of contact identified in Section VII of the solicitation or the EPA Suspension and Debarment Program (<https://www.epa.gov/grants/suspension-and-debarment-contacts>).

j. Unfair Competitive Advantage

EPA personnel will take appropriate actions in situations where it is determined that an applicant may have an unfair competitive advantage, or the appearance of such, in competing for awards under this announcement. Affected applicants will be provided an opportunity to respond before any final action is taken.

k. Exchange Network

The Environmental Information Exchange Network (Exchange Network, Network or EN) is a partner-inspired, developed, implemented and governed information network. It facilitates environmental data sharing among EPA, states, tribes and territories. The EN uses a standards-based approach that allows partners to exchange data over the Internet regardless of the specific information technology used. This replaces the need to perform complex and expensive data transformations to move data between systems or to share data on paper, discs or other media or via email. Partners share electronic data more easily and at a lower cost, and environmental decision makers are able to use the data to make timely decisions. States, tribes and territories exchanging data with each other or with EPA, should make the Exchange Network and the agency's connection to it, the Central Data Exchange (CDX), the standard way they exchange data and should phase out any legacy methods they have been using. More information available on the [Exchange Network](#)

l. Debriefings

Unsuccessful applicants interested in requesting a debriefing should refer to the procedures for debriefings in the [Dispute Resolution Procedures](#), which can also be found at 70 FR (Federal Register) 3629, 3630 (January 26, 2005). Copies of these procedures may also be requested by contacting the person listed in Section VII of the announcement. Please note that the FR notice referenced above refers to regulations at 40 CFR Parts 30 and 31 that have been superseded by regulations in 2 CFR parts 200 and 1500. Notwithstanding this, the procedures for competition-related debriefings and disputes remains unchanged from the procedures described at 70 FR 3629, 3630, as indicated in [2 CFR Part 1500, Subpart E](#).

m. Disputes

Assistance agreement competition-related disputes will be resolved in accordance with the dispute resolution procedures published in 70 FR (Federal Register) 3629, 3630 (January 26, 2005) which can be found at [Grant Competition Dispute Resolution Procedures](#). Copies of these procedures may also be requested by contacting the person listed in Section VII of the announcement. Note, the FR notice references regulations at 40 CFR Parts 30 and 31 that have been superseded by regulations in 2 CFR parts 200 and 1500. Notwithstanding the regulatory changes, the procedures for competition-related disputes remains unchanged from the procedures described at 70 FR 3629, 3630, as indicated in [2 CFR Part 1500, Subpart E](#).

n. Copyrights

In accordance with [2 CFR 200.315](#), EPA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, copyrighted works developed under a grant, subaward or contract under a grant or subaward. Examples of federal purpose include but are not limited to: (1) Use by EPA and other federal employees for official government purposes; (2) Use by federal contractors performing specific tasks for the government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of

documents for inclusion in federal depositories; (5) Use by state, tribal and local governments that carry out delegated federal environmental programs as co-regulators or act as official partners with EPA to carry out a national environmental program within their jurisdiction; and (6) Limited use by other recipients to carry out federal grants provided the use is consistent with the terms of EPA's authorization to the recipient to use the copyrighted material.

o. Competency of Organizations Generating Environmental Measurement Data (if applicable):

In accordance with EPA's Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, successful applicants/recipients for awards under this competition that are expected to exceed \$200,000 in federal funding that involve the generation or use of environmental data must demonstrate competency to perform such work either prior to award, or if that is not practicable or will delay the award, prior to beginning any work involving the generation or use of environmental data under the agreement. Applicants that demonstrate competency prior to award must maintain competency, as appropriate, during the award period. Applicants that do not address competency prior to award must demonstrate competency prior to beginning any work involving the generation or use of environmental data under the agreement and maintain competency, as appropriate, during the award period. A copy of the policy is available online at Federal Register Volume 78, Number 82 or a copy may also be requested by contacting the person listed in Section VII of the announcement.

p. Confidentiality Statements-Fraud, Waste or Abuse Reporting (if applicable):

Awards made under this announcement are subject to a provision contained in an appropriations act that prohibits EPA from entering into a contract, grant or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.

q. EPA Financial Assistance Conflict of Interest Policy:

The Applicant's Conflict of Interest (COI) Point of Contact as defined in [EPA's Conflict of Interest Policy](#) must notify the EPA contact identified in Section VII of this solicitation of any actual or potential conflict of interest that they are aware of that may provide the Applicant with an unfair competitive advantage in competing for EPA financial assistance awards within 10 calendar days of becoming aware of the conflict of interest. Examples of an unfair competitive advantage include but are not limited to situations in which an EPA employee reviewed and commented on or drafted all or part of an applicant's application. Note that EPA does not generally consider receiving information from an EPA employee limited to whether the applicant or the applicant's proposed project is eligible to compete for funding to confer an unfair competitive advantage. In addition, assistance agreements made under this solicitation will include a term and condition notifying recipients of their COI disclosure obligations and

responsibilities under the award including the need to have systems in place to address, resolve and disclose COIs to EPA.

r. **Mandatory Disclosures**

As required by [2 CFR § 200.113](#), non-federal entities or applicants for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in [2 CFR § 200.339](#) including suspension and debarment.

s. **Reporting and Use of Information Concerning Recipient Integrity and Performance**

If the Federal share of any Federal award may include more than \$500,000 over the period of performance, applicants are advised about the post-award reporting requirements reflected in the [Award Term and Condition for Recipient Integrity and Performance Matters contained in Appendix XII](#) to 2 CFR Part 200.

t. **Life Sciences Dual Use Research of Concern**

Projects awarded under this solicitation that involve life sciences research as defined below are subject to the requirements of the *United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern* (iDURC Policy), provided that the recipient is an institution within the United States that receives funding through this agreement, or from any other source, to conduct or sponsor research involving any of the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If the recipient is an institution outside the United States that receives funding through this agreement to conduct or sponsor research involving any of those same agents or toxins, it will also be subject to requirements of the iDURC Policy. The [iDURC Policy](#) is available for reference.

**Life Sciences Research**, for purposes of this clause, and based on the definition of research in 40 CFR §26.102(d), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel. [Note: This is consistent with Office of Management and Budget Circular A-11.]

u. **Indirect Costs**

Indirect costs (IDCs) may be budgeted and charged by recipients of Federal assistance agreements in accordance with [2 CFR Part 200](#). EPA's [Indirect Cost Policy for Recipients of EPA Assistance Agreements](#) (IDC Policy) implements the Federal regulations, and the following applies to all EPA assistance agreements, unless there are [statutory or regulatory limits on IDCs](#).

In order for an assistance agreement recipient to use EPA funding for indirect costs, the IDC

category of the recipient's assistance agreement award budget must include an amount for IDCs and at least one of the following must apply:

- With the exception of “exempt” agencies and Institutions of Higher Education as noted below, all recipients must have one of the following current (not expired) IDC rates, including IDC rates that have been extended by the cognizant agency:
  - Provisional;
  - Final;
  - Fixed rate with carry-forward;
  - Predetermined;
  - 10% de minimis rate authorized by 2 CFR 200.414(f)
  - EPA-approved use of one of the following:
    - 10% de minimis as detailed in section 6.3 of the IDC Policy; or
    - Expired fixed rate with carry-forward as detailed in section 6.4.a. of the IDC Policy.
- “Exempt” state or local governmental departments or agencies are agencies that receive up to and including \$35,000,000 in Federal funding per the department or agency's fiscal year, and must have an IDC rate application developed in accordance with [2 CFR 200 Appendix VII](#), with documentation maintained and available for audit.
- Institutions of Higher Education must use the IDC rate in place at the time of award for the life of the assistance agreement (unless the rate was provisional at time of award, in which case the rate will change once it becomes final). As provided by [2 CFR Part 200, Appendix III\(C\)\(7\)](#), the term “life of the assistance agreement”, means each competitive segment of the project. Additional information is available in the regulation.

IDCs incurred during any period of the assistance agreement that are not covered by the provisions above are not allowable costs, and must not be drawn down by the recipient. Recipients may budget for IDCs pending approval of their IDC rate by the cognizant Federal agency or an exception granted by EPA under section 6.3 or 6.4 of the IDC Policy. However, recipients may not draw down IDCs until their rate is approved or EPA grants an exception.

The IDC Policy does not govern indirect rates for subrecipients or recipient procurement contractors under EPA assistance agreements. Pass-through entities are required to comply with [2 CFR 200.331\(a\)\(4\)](#) when establishing indirect cost rates for subawards. See the [Indirect Cost Guidance for Recipients of EPA Assistance Agreements](#) for additional information.

v. Increasing Access to Results of EPA-Funded Extramural Scientific Research (applies to solicitations for research awards)

Research is defined in the [Policy for Increasing Access to Results of EPA-Funded Extramural Scientific Research](#) as the systematic inquiry directed toward fuller scientific knowledge or understanding of the subject studied. This Policy requires that the results of EPA-funded extramural scientific research are accessible to the public to the greatest extent feasible

consistent with applicable law; policies and Orders; the Agency's mission; resource constraints; and U.S. national, homeland and economic security.

(a) When a journal does not submit a journal publication or author manuscript associated with the journal publication directly to the National Institute of Health's [PubMed Central \(PMC\)](#), recipients are responsible for making the author manuscript accessible to the public at no charge via PMC. The recipient must submit the author manuscript to PMC no later than the end of the embargo period of twelve months after journal publication. PMC then posts the manuscript on its site at the end of the embargo period, so it is accessible to the public.

Recipients are responsible for ensuring that either the journal publication or the author manuscript associated with the journal publication is deposited into PMC, so that the public may read, download and analyze the research results in digital form. Instructions for depositing author manuscripts associated with journal publications in PMC will be included in the award's terms and conditions.

(b) Scientific research data underlying a journal publication are to be posted to a publicly accessible data repository by the recipient within 30 days of the date the journal publication or associated author manuscript becomes accessible to the public, whether made accessible by the journal at the time of publication or by PMC following the embargo period, unless (a) the dataset has already been made accessible to the public via public release or another sharing mechanism; or (b) the research data cannot be released due to one or more constraints, such as requirements to protect personal privacy, proprietary interest, property rights, national security or dual use research of concern. Datasets must contain enough information to allow independent use (understanding, validation and analysis) of the data.

(c) Publication metadata records shall be provided via the National Institute of Health's Manuscript Submission ([NIHMS](#)) when the journal publication or associated author manuscript is submitted to NIHMS. The metadata record for the dataset underlying the journal publication will be made accessible by the recipient through EPA's [dataset metadata repository](#) within 30 days of the date the journal publication or associated author manuscript becomes accessible to the public, whether made accessible by the journal at the time of publication or by PMC following the embargo period. Guidance for providing dataset metadata to EPA's dataset metadata repository will be included in the award's terms and conditions.

#### w. Terms and Conditions

The applicable terms and conditions that apply to awards resulting from this solicitation will be included in the Award document. A general listing of terms and conditions can be found at the [Grant Terms and Conditions](#) page.

#### x. Build America, Buy America

Applicants should be aware that if their proposals include using Federal funds for an infrastructure project that includes the purchase of articles, materials, and supplies in the United States for identified EPA financial assistance funding programs, they must comply with the following Term and Condition if they are selected for award. Applicants should direct questions about this requirement to the program Point of Contact listed in Section VII for the Notice of Funding Opportunity (FON).

### **Build America, Buy America – Required Use of American Iron, Steel, Manufactured Products, and Construction Materials**

***Buy America Preference.*** Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

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

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

***Categorization of articles, materials, and supplies.*** An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article,



material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

***Application of the Buy America Preference by category.*** An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

***Determining the cost of components for manufactured products.*** In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

***Construction material standards.*** The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

(1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

(3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

**(4)** Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

**(5)** Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

**(6)** Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

**(7)** Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

**(8)** Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

**Waivers.** When supported by rationale provided in IJA §70914, the recipient may submit a waiver request in writing to EPA. Recipients should request guidance on the submission instructions of an EPA waiver request from the EPA Project Officer for this agreement. A list of approved EPA waivers (general applicability and project specific) is available on the [EPA Build America, Buy America website](#).

EPA may waive the application of the Buy America Preference when it has determined that one of the following exceptions applies:

- (1)** applying the Buy America Preference would be inconsistent with the public interest;
- (2)** the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3)** the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

For questions regarding the Build America, Buy America Act requirements for this assistance agreement or to determine if there is an approved waiver in place, please contact the EPA Project Officer for this agreement.

**Definitions.** For legal definitions and sourcing requirements, the recipient must consult the [EPA Build America, Buy America website](#), [2 CFR Part 184](#), and the [Office of Management and](#)

[Budget's \(OMB\) Memorandum M-24-02 Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.](#)

y. Quality Assurance – Quality Management Plans (QMP) and Quality Assurance Project Plans (QAPP)

Quality assurance documentation is required for awards that involve environmental information operations as specified in 2 CFR 1500.12 Quality Assurance, [EPA's Quality Policy](#), and [EPA's Quality Procedure](#). If selected for an award, EPA will work with the applicant to determine if a QMP and/or QAPP is required for the project. Applicants will develop the required QA document(s) and submit for EPA's approval. Selected applicants cannot begin environmental information operations until EPA approves the QMP and/or QAPP.

**Environmental Information Operations:** A collective term that encompasses the collection, production, evaluation, or use of environmental information and the design, construction, operation, or application of environmental technology. Environmental information includes data and information that describe environmental processes or conditions. Examples include but are not limited to: direct measurements of environmental parameters or processes, analytical testing results of environmental conditions (e.g., geophysical, or hydrological conditions), information on physical parameters or processes collected using environmental technologies, calculations or analyses of environmental information, information provided by models, information compiled or obtained from databases, software applications, decision support tools, websites, existing literature, and other sources, and development of environmental software, tools, models, methods, and applications.

**Quality Assurance Project Plans (QAPP):** If the award involves environmental information operations, the recipient is required to develop a QAPP(s). A QAPP describes how environmental information operations are planned, implemented, documented, and assessed during the life cycle of a project. Requirements for QAPPs are found in the most recent version of EPA's [Quality Assurance Project Plan Standard](#).

**Quality Management Plan (QMP):** In addition to a QAPP(s), the recipient may also need to develop a QMP. The QMP describes an organization's Quality Program. Requirements for QMPs are found in the most recent version of EPA's [Quality Management Standard](#). The QMP must also document all technical activities to be performed under the Quality Program and how the program will integrate QA, quality control, and QAPPs into all its environmental information operations.

z. Federal Civil Rights Responsibilities, Including Title VI of the Civil Rights Act of 1964 In 1994, [Executive Order 12898](#) was issued to direct Federal agencies to incorporate achieving environmental justice into their mission. The Presidential Memorandum accompanying that Executive Order required in part, that consistent with Title VI, each Federal agency "...ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria,

methods, or practices that discriminate on the basis of race, color, or national origin.” See Presidential Memorandum at [https://www.epa.gov/sites/default/files/2015-02/documents/clinton\\_memo\\_12898.pdf](https://www.epa.gov/sites/default/files/2015-02/documents/clinton_memo_12898.pdf).

EPA enforces federal civil rights laws that together prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex, and age, respectively Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title IX of the Education Amendments of 1972 (Title IX), Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA) and the Age Discrimination Act of 1975 (Age Discrimination Act). All applicants for and recipients of EPA financial assistance have an affirmative obligation to comply with these laws, as do any subrecipients of the primary recipient, and any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. See federal civil rights laws and EPA’s regulation at <https://www.epa.gov/external-civil-rights/federal-civil-rights-laws-including-title-vi-and-epas-non-discrimination>.

EPA’s nondiscrimination regulation at 40 C.F.R. Parts 5 and 7 also contain longstanding procedural requirements applicable to applicants for and recipients (including sub-recipients) of EPA financial assistance. These requirements include having a notice of nondiscrimination, nondiscrimination coordinator, grievance procedures, a process for collecting and maintaining nondiscrimination compliance information, and pursuant to Title VI and the Rehabilitation Act of 1973, developing policies and procedures for ensuring meaningful access to programs and activities for individuals with limited-English proficiency and individuals with disabilities. In addition, recipients’ public participation processes must also be implemented consistent with the federal civil rights laws.

EPA furthers recipients’ compliance with these obligations through pre-award reviews, technical assistance and training, additional clarifying guidance and enhanced civil rights enforcement. Accordingly, EPA will carefully evaluate the grants awarded under this Notice of Funding Opportunity to ensure all recipients are in compliance with federal civil rights obligations. See website for Preaward information, <https://www.epa.gov/grants/tips-completing-epa-form-4700-4>.

For more information about the federal civil rights laws enforced by EPA, including Title VI, please visit: <https://www.epa.gov/external-civil-rights/federal-civil-rights-laws-including-title-vi-and-epas-non-discrimination>.

aa. Required Training for New Applicants and Recipients

EPA is now requiring all new assistance agreement applicants to complete two mandatory trainings before receiving EPA grant funds. Those recipients who are new to EPA grants and/or cooperative agreements will be required to complete the [EPA Grants Management Training for Applicants and Recipients](#) and the training on [How to Develop a Budget](#). EPA defines new applicants as an organization never receiving an EPA grant before, or if the organization last received an EPA grant prior to federal Fiscal Year (FY) 2015 (i.e. – prior to October 1, 2014). Organizations can check [USA Spending](#) and determine if they are a new applicant/recipient for this requirement by using these [instructions](#). Only one recipient staff person needs to complete the training; EPA recommends it is an individual listed in the grant applicant/recipient's [EPA Key Contacts Form 5700-54](#) (submitted with the application). For additional information, please refer to [Recipient/Applicant Information Notice \(RAIN\)-2024-G01](#).