

**Mississippi Department of Finance and
Administration**

**OFFICE OF PROCUREMENT AND
CONTRACTS**

**REQUEST FOR QUALIFICATIONS (RFQ) FOR
BEAD PROGRAM CHALLENGE ADJUDICATION
SERVICES**

RFx #: 3140003911

July 1, 2024

Contact information for this request for qualifications:

BEAD Program Challenge Adjudication Services RFQ

c/o Teselyn Melton Funches, RFQ Coordinator

DFA – Office of Central Procurement

501 North West Street

Suite 1301-C Woolfolk Building

Jackson, Mississippi 39201

teselyn.funches@dfa.ms.gov

SECTION 1. INTRODUCTION AND OVERVIEW

1.1 Purpose and Goals

The Mississippi Department of Finance and Administration (DFA) Office of Central Procurement issues this Request for Qualifications (RFQ) to solicit qualifications from qualified, experienced, responsible and financially sound Offerors to provide BEAD Program Challenge Adjudication Services to DFA. These services are to be provided for the Office of Broadband Expansion and Accessibility of Mississippi (BEAM) within DFA. The selected Offeror will assist DFA by providing such services as requested. The successful Offeror will receive, analyze, fully adjudicate all challenges and submit all required and requested reports in accordance with the National Telecommunications and Information Administration (NTIA) and BEAM challenge process, regulations. The successful Offeror will also complete any other BEAD Program Challenge Adjudication requirements and other BEAD related BEAM requests.

Offerors must have the proven ability to perform all services requested in this RFQ. A more detailed list of services is provided in *Section 5 – Scope of Services*. DFA seeks to enter into a firm fixed price contract based on an all-inclusive blended hourly rate for these services.

The awarded contract will be for one (1) year. The anticipated effective date of this contract is September 5, 2024, upon approval of the Mississippi Public Procurement Review Board (PPRB). A draft copy of the contract has been included as Appendix C for your review. This RFQ, along with any amendments, if issued, the offeror’s qualifications, and any Best and Final Offer, if requested, along with any written contract or agreement signed by both parties, shall constitute the Contract.

This RFQ and any resulting contract shall be governed by Mississippi law and the applicable provisions of the *Mississippi Public Procurement Review Board (PPRB) Office of Personal Service Contract Review Rules and Regulations (OPSCR)*, a copy of which is available at 501 N. West Street, Suite 701E, Jackson, Mississippi 39201 for inspection or at <http://www.dfa.ms.gov/media/9413/pprb-opscr-rules-and-regulations-effective-01182020.pdf>.

A copy of this RFQ, including all appendices and attachments, and any subsequent amendments, including the Question and Answer amendment, if issued, will be posted to the Office of Procurement and Contracts tab on the DFA website at <http://www.dfa.ms.gov> under the “Bid/RFQ Notice” section. It is the responsibility of all interested vendors to monitor the website for updates regarding this procurement.

Before the award of any contract, the Offeror will be required to document to DFA that it has the necessary capabilities to provide the core services specified in this RFQ. The Offeror may also be required to provide additional client references, as well as related project experience detail in order to satisfy DFA that the Offeror is qualified. DFA may make reasonable investigations, as it deems necessary and proper, to determine the ability of the Offeror to perform the work, and the Offeror shall be required to furnish to DFA all information that may be requested for this purpose. DFA reserves the right to reject any qualifications if the Offeror fails to provide the requested information and/or fails to satisfy DFA that the Offeror is properly qualified to carry out the obligations of the contract and to complete the work described in this RFQ.

1.2 Qualifications Submission Requirements

If submitting in paper format, Offeror must submit:

- a. One (1) original and signed copy of the complete qualifications along with three (3) copies. Each submitted in a three-ring binder in the order requested in **Section 4. Content of Qualifications**.
- b. One (1) electronic copy of the complete qualifications including all attachments in a searchable Microsoft Office® format, preferably in Word® or Portable Document Format (PDF®).
- c. One (1) PUBLIC electronic copy of the complete qualifications including all attachments and referenced documents in a searchable Microsoft Office® format, preferably in Word® or PDF®, that has been redacted **if the qualifications contain confidential information as described below**.

Each page of the qualifications must be numbered. Multiple page attachments and samples should be numbered internally within each document, and not necessarily numbered in the overall page number sequence of the entire qualifications. The intent of this requirement is that the Offeror submit all information in a manner so that it is clearly referenced and easily located.

If submitting in the State's e-procurement system, the Mississippi Accountability System for Government Information and Collaboration (MAGIC), the submission must also be organized as requested in **Section 4. Content of Qualifications**.

1.3 Public Copy of Complete Qualifications/Mississippi Public Records Submission

Any Offeror who alleges its qualifications contains confidential commercial and financial information of a proprietary nature and/or trade secrets protected from disclosure under the Mississippi Public Records Act pursuant to Mississippi Code Annotated, §§ 25-61-91, *et seq.*, 79-23-1 and or 75-26-3(d) shall submit a Public Copy as stated herein. Offeror must complete and submit Appendix D, Proprietary Information Acknowledgement.

1.3.1. Public Copy

At the time the qualifications package is submitted, Offeror shall provide, in addition to copies required above, a full complete copy of the qualifications and a second copy of the full and complete qualifications with redactions in black to any information Offeror deems to be confidential commercial and financial information of a proprietary nature and/or trade secrets. Offeror must also include a statement identifying which section(s) or information has been redacted and the specific statutory authority for the exemption(s). *An electronic copy of the redacted qualifications and statement should be marked PUBLIC and included as a part of the electronic submission as described above.*

The Public Copy of the qualifications is considered a public record and is subject to release by DFA without notice to the Offeror pursuant to Miss. Code Ann. §§ 25-61-1 *et seq.* DFA may release the Public Copy pursuant to requests under the Mississippi Public Records Act

or any other reason deemed necessary by DFA.

1.3.2. Petition for Protective Order

DFA may not provide notice of any request for public records. Therefore, any Offeror that prefers further protection of its records should file a petition for a protective order in the Chancery Court of Hinds County, Mississippi within twenty-one (21) calendar days following the qualifications deadline. Any such petition should request an injunction under Miss. Code Ann. §§ 75-26-5(3) and 25-61-9 and request that the Court identify all information in the qualifications as confidential commercial or financial information under Mississippi Code §§79-23-1 or 25-61-9, and/or trade secret under Mississippi Code §§75-26-3(d), 75-26-5(3) or 25-61-9.

The petition should also cite the following requirements of Miss. Code Ann § 25-61-9(7): “For all procurement contracts awarded by state agencies, the provisions of the contract which contain the commodities purchased or personal or professional services provided, the unit prices to be contained within the procurement contracts, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information.”

Notice of any such petition being filed in the Chancery Court of Hinds County, Mississippi shall be served on DFA in accordance with the Mississippi Rules of Civil Procedure. Offeror shall also directly provide DFA Counsel a copy of such notice by mail to DFA Attn: Suzanne C. Hudson, Special Assistant Attorney General, 210 E. Capitol Street, Office 332 Jackson, MS 39205, and a courtesy copy via email within twenty-one (21) days of the submission deadline. Delivery via email shall be made to Suzann C. Hudson, at Suzanne.Hudson@ago.ms.gov. The risk of delivery shall be borne by the Offeror.

1.3.3 No Confidential Commercial Information:

If an Offeror does not submit a Public Copy, DFA will consider the qualifications submitted to be the Public Copy and subject to being released, in full, without notice to the Offer.

Any Offeror that does not allege their qualifications contains confidential commercial or financial information and/or trade secrets protected from disclosure under the Mississippi Public Records Act pursuant to Miss. Code Ann. §§ 25-61-1, et seq., 79-23-1, 75-26-3(d), and/or 75-26-5(3) shall submit a signed acknowledgement attached hereto as Appendix D, along with its qualifications submission. The acknowledgement shall be signed by a person with signatory and binding authority for the Offeror.

Failure to submit either a redacted version of the Offeror’s qualifications and a signed acknowledgement on or before the qualifications submission deadline may result in the Offeror being deemed non-responsive. DFA shall have the sole discretion to provide additional time for the Offeror to complete the requirements.

By submitting qualifications to DFA in response to this RFQ, Offeror indicates its consent and waiver as described in this Section. Offeror acknowledges that, if the protection of confidential commercial or financial information of a proprietary nature or a trade secret is challenged by any person, business, or governmental body, then Offeror shall be responsible for intervening and

justifying its protection from public disclosure in any applicable hearing or proceeding at Offeror's sole and exclusive cost.

1.3.4 RFQ Modifications or Additions:

Modifications or additions to any portion of the RFQ may be cause for rejection of the qualifications. DFA reserves the right to decide, on a case-by-case basis, whether to reject qualifications with modifications or additions as non-responsive. As a precondition to qualifications acceptance, DFA may request the Offeror to withdraw or modify those portions of the qualifications deemed non-responsive that do not affect quality, quantity, price, or delivery of the service. The RFQ issued by DFA is the official version and will supersede any conflicting RFQ language subsequently submitted in qualifications.

All documentation submitted in response to this RFQ and any subsequent requests for information pertaining to this RFQ shall become the property of DFA and will not be returned to the Offeror. All information requested is considered important. Failure to provide all requested information and in the required format may result in disqualification of the qualifications. DFA has no obligation to locate or acknowledge any information in the qualifications that is not presented under the appropriate outline and in the proper location according to the instructions herein.

Qualifications must be submitted in writing using the attached forms and if submitting by U.S. Mail to the following address:

**BEAD Program Challenge Adjudication Services RFQ
c/o Teselyn Melton Funches, RFQ Coordinator
DFA - Office of Central Procurement Suite 1301-C
P O Box 267
Jackson, Mississippi 39205**

If the qualifications are being submitted by delivery, it should be delivered to the follow address:

**BEAD Program Challenge Adjudication Services RFQ
c/o Teselyn Melton Funches, RFQ Coordinator
DFA - Office of Central Procurement
501 North West Street
Suite 1301-C Woolfolk Building
Jackson, Mississippi 39201**

To prevent opening by unauthorized individuals, the qualifications, including any and all attachments, must be sealed in one package. The outside cover of the package containing the sealed qualifications **shall be labeled:**

**Qualifications – DO NOT OPEN
RFx # 3140003911
BEAD Program Challenge Adjudication Services**

1.3.5 Qualifications Submission Period:

Qualifications shall be submitted to DFA or via the State of Mississippi’s MAGIC system no later than **Wednesday, July 24, 2024, by 10:00AM Central Daylight Time (CDT)**. Timely submission of the qualifications package is the responsibility of the Offeror. Any qualifications received after the deadline will be considered late and will be rejected and will not be considered for award. The Offeror shall be notified as soon as practicable if their qualifications were rejected and the reason for such rejection.

It is suggested that if qualifications are mailed to DFA, they should be posted in certified mail with a return receipt requested. Qualifications received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt shall not be considered unless it is the only qualifications received, or it is received before award is made and was sent by registered mail no later than the fifth (5th) calendar day before the date specified for receipt of bids. If determined by DFA that the late receipt was due solely to mishandling by DFA after receipt at the specified address, the qualifications may be considered for award.

The only acceptable evidence to establish the date of mailing is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Offeror should request postal clerks to place a hand cancellation postmark (often called a bull’s eye) on both the receipt and the envelope or wrapper. DFA will not be responsible for mail delays or lost mail.

1.4 Important Dates

Monday, July 1, 2024 Monday, July 8, 2024	Request for Qualifications advertised
Wednesday, July 10, 2024	Deadline to submit questions by 2:00 PM CDT
Tuesday, July 16, 2024	Anticipated date responses to questions will be posted
Wednesday, July 24, 2024	Qualifications submission deadline by 10:00 AM CDT
Tuesday, August 6, 2024	Anticipated date of Notice of Intent to Award
Wednesday, September 4, 2024	PPRB Meeting for approval
Thursday, September 5, 2024	Contract effective date

NOTE: Adjustments to the schedule may be made as deemed necessary by the OPSCR Office of Central Procurement.

1.5 Questions and Answers

Offerors should download the “Question and Answer” template from DFA website at <http://www.dfa.ms.gov/dfa-offices/procurement-contracts/>. Questions must be submitted on the

referenced template and should be submitted via email to the RFQ Coordinator, Teselyn Melton Funches, at teselyn.funches@dfa.ms.gov with a subject line: “Questions – **BEAD Program Challenge Adjudication Services RFQ (RFX#3140003911)**”. Questions must be received no later than **2:00 PM CDT, on Wednesday, July 10, 2024**, to ensure a response by DFA. Responses to questions will be posted to the Office of Procurement and Contracts page on the DFA website at <http://www.dfa.ms.gov/dfa-offices/procurement-contracts/> under the “Active Procurements” section as an amendment to the RFQ on or about **Tuesday, July 16, 2024**. Questions received after **Wednesday, July 10, 2024**, may be considered for response, although there is no guarantee as to if or when a response will be provided. It is the Offeror’s sole responsibility to regularly monitor the website for amendments and/or announcements concerning this RFQ.

1.6 Acknowledgment of Amendments

DFA reserves the right to amend this RFQ at any time. Should an amendment to the RFQ be issued, it will be posted to the Office of Procurement and Contracts page on the DFA website at <http://www.dfa.ms.gov/procurement-contracts> under the “Active Procurements”. Offerors must acknowledge receipt of any amendment to the RFQ by signing and returning the amendment. The acknowledgment must be included in the qualifications submission. Please monitor the website for amendments to the RFQ. DFA’s responses to questions will be treated as amendments to the RFQ and will require acknowledgment.

1.7 Cost of Qualifications Preparation

All costs incurred by the Offeror in preparing and delivering its qualifications, making presentations, and any subsequent time and travel to meet with DFA regarding its qualifications shall be borne exclusively at the Offeror’s expense.

1.8 Right to Reject, Cancel and/or Issue Another RFQ

DFA specifically reserves the right to, at any time, reject any or all qualifications received in response to the RFQ, cancel the RFQ in its entirety, or issue another RFQ.

1.9 Registration with Mississippi Secretary of State

By submitting a response to this solicitation, the Offeror certifies that it is registered to do business in the state of Mississippi as prescribed by Mississippi law and the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified that it has been awarded a contract.

1.10 Debarment

By submitting a response to this solicitation, the Offeror certifies that it is not currently debarred from submitting qualifications for contracts issued by any political subdivision or agency of the state of Mississippi or Federal government and that it is not an agent of a person or entity that is currently debarred from submitting qualifications for contracts issued by any political subdivision or agency of the state of Mississippi.

1.11 Compliance Requirement and Contract Exceptions

By submitting a response to this RFQ Offeror confirms that it will comply with the requirements

of the Scope of Services. A copy of the *Draft BEAD Program Challenge Adjudication Services Contract* (see Appendix C) has been provided for your review. If you object to any of the terms and conditions of the Draft contract, please note and explain your objections on the *Contract Exceptions* form. Clauses with headings in *italic blue* type in the *Draft BEAD Program Challenge Adjudication Services Contract* (see Appendix C) are deemed mandatory and are nonnegotiable.

1.12 Right to Consider Historical Information

DFA reserves the right to consider historical information regarding the Offeror, whether gained from the Offeror's qualifications, conferences with the Offeror, references, or any other source during the evaluation process. This may include, but is not limited to, information from any state or federal regulatory entity.

1.13 State Approval

It is understood that this contract may require approval by the PPRB. If required and if this contract is not approved, it is void and no payment shall be made hereunder. Every effort shall be made by DFA to facilitate rapid approval and a start date consistent with the proposed schedule.

1.14 Federal Required Clauses

1.14.1 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Contractor shall take all affirmative steps necessary to assure that minority business, women's business enterprises, and labor surplus area firms are used, when possible, including those steps listed in 2 CFR § 200.321(b).

1.14.2 Domestic Preferences for Procurements

To the extent applicable, appropriate, and consistent with law, Contractor certifies that, during the term of this Contract, it will comply with applicable requirements of 2 C.F.R. § 200.322.

1.14.3 Procurement of Recovered Materials

Contractor certifies that, during the term of this Contract, it will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act in accordance with the guidelines and requirements of 2 C.F.R. § 200.323.

1.14.4 Environmental Compliance

1. The Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.).

a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

b. The Contractor agrees to report each violation to DFA and understands and agrees that DFA will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by NTIA.

2. The Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 § et seq.).

a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 § et seq.).

b. The Contractor agrees to report each violation to DFA and understands and agrees that DFA will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by NTIA.

1.14.5 Byrd Anti-Lobbying Amendment

1. Contractors who apply or bid for an award of \$100,000 or more shall submit to MTC a Certification Regarding Lobbying. Each tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

2. Contractor shall include a requirement to comply with these regulations (31 U.S.C. § 1352) in any subcontractor or lower tier covered transaction it enters into.

1.14.6 Covered Telecommunications Equipment

Contractor certifies that during the term of this Contract, it will comply with Public Law 115-232, section 889, in accordance with the guidelines and requirements of 2 C.F.R. § 200.216, where such guidelines are applicable.

1.14.7 Build America, Buy America Act

Contractor certifies that during the term of this Contract, it will comply with the Public Law 117-58 division G, title IX, subtitle A, part I, sections 70911 through 70917, in accordance with the guidelines set in 2 C.F.R. Part 184

1.14.8 Additional Federal Requirements

The Contract shall be governed by the federal requirements contained in 2 C.F.R. Pt. 200, App. II, where applicable, or not otherwise addressed herein. Additionally, the Contract shall be governed by the attached Appendix F "Department of Commerce Financial Assistance Standard Terms and Conditions." If subsequent federal requirements are identified, the Contract shall be amended to include such requirements.

SECTION 2. PROCUREMENT METHODOLOGY

2.1 Restrictions on Communications with BEAM and/or DFA Staff

At no time shall any Offeror or its personnel contact, or attempt to contact, any DFA and/or BEAM staff regarding this RFQ except the RFQ Coordinator. All correspondence should be sent to the RFQ Coordinator, Teselyn Melton Funches at teselyn.funches@dfa.ms.gov. **Should it be determined that any Offeror has attempted to communicate or has communicated with any BEAM or DFA employee, other than the RFQ Coordinator regarding this RFQ, DFA, at its discretion, may disqualify the Offeror from submitting qualifications in response to this RFQ.**

2.2 Acceptance of Qualifications

After receipt of the qualifications, DFA reserves the right to award the contract based on the terms, conditions, and premises of the RFQ and the qualifications of the selected company without negotiation.

All qualifications properly submitted shall be accepted by DFA. After review DFA may request necessary amendments from all Offerors, reject any or all qualifications received, or cancel this RFQ, according to the best interest of DFA and the State of Mississippi.

DFA also reserves the right to waive minor irregularities in qualifications providing such action is in the best interest of DFA and the State of Mississippi. A minor irregularity is defined as a variation of the RFQ which does not affect the price of the qualifications or give one party an advantage or benefit not enjoyed by other parties, or adversely impact the interest of DFA. Where DFA may waive minor irregularities as determined by DFA, such waiver shall in no way modify the RFQ requirements or excuse the Offeror from full compliance with the RFQ specifications and other contract requirements should the Offeror be awarded the contract.

DFA reserves the right to exclude any and all non-responsive qualifications from any consideration for contract award. DFA shall award a firm fixed-price contract to the Offeror whose qualifications are responsive to the solicitation and are most advantageous to DFA and the State of Mississippi in price, quality, and other factors considered.

2.3 Disposition of Qualifications

The qualifications submitted by the successful Offeror shall be incorporated into and become part of the resulting contract. All qualifications received by DFA shall upon receipt become and remain the property of DFA. DFA shall have the right to use all nonproprietary concepts contained in any qualifications and this right shall not affect the solicitation or rejection of the qualifications.

2.4 Modification or Withdrawal of Qualifications

Prior to the qualifications due date, submitted qualifications may be withdrawn by submitting a written request for withdrawal to DFA, signed by the Offeror.

An Offeror may submit amended qualifications before the due date for receipt of qualifications. Such amended qualifications shall be a complete replacement for previously submitted

qualifications and shall be clearly identified as such. DFA shall not merge, collate, or assemble qualifications materials.

Unless requested by DFA, no other amendments, revisions, or alterations to qualifications shall be accepted after the qualifications due date.

Any submitted qualifications shall remain valid for one hundred eighty (180) calendar days from the qualifications due date.

2.5 Rejection of Qualifications

Qualifications that include terms and conditions that do not conform to the terms and conditions specified within this RFQ document are subject to rejection as non-responsive. Further, submission of qualifications that are not complete and/or unsigned is subject to rejection as non-responsive. DFA staff reserves the right to permit the Offeror to withdraw nonconforming terms and conditions from its qualifications prior to a determination by DFA staff of non-responsiveness based on the submission of nonconforming terms and conditions. Any qualifications which are conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and will be rejected.

2.6 Alternate Qualifications

Each Offeror, its subsidiaries, affiliates, or related entities shall be limited to one (1) qualifications response which is responsive to the requirements of this RFQ. Failure to submit responsive qualifications may result in the rejection of the Offeror's qualifications. Submission of more than one (1) qualifications response by an Offeror may, at the discretion of DFA, result in the summary rejection of all qualifications submitted. An Offeror's qualifications shall not include variable or multiple pricing options.

2.7 Corrections and Clarifications

The DFA reserves the right to request clarifications or corrections to qualifications. Any qualifications received which do not meet any of the requirements of this RFQ, including clarification or correction requests, may be considered non-responsive and eliminated from further consideration.

2.8 Evaluation of Qualifications

All qualifications received in response to this RFQ by the stated deadline will receive a comprehensive, fair, and impartial evaluation. An evaluation committee will evaluate the qualifications using a three-phase process, consisting of Compliance, Analysis, and Finalist phases. For qualifications determined to be compliant and responsive to the RFQ, consensus scoring will be used in the evaluation process using a 100-point scale. Consensus scoring involves general agreement of opinion among evaluators, based on information and data contained in the RFQ responses. The evaluation of any qualifications may be suspended and/or terminated at DFA's discretion at any point during the evaluation process at which DFA determines that said qualifications and/or Offeror fail to meet any of the mandatory requirements as stated in this RFQ, the qualifications are determined to contain fatal deficiencies to the extent that the likelihood of selection for contract is minimal, or DFA receives reliable information that would make

contracting with the Offeror impractical or otherwise not in the best interests of the State of Mississippi. The evaluation process, including evaluation factors and weights, is described below:

Compliance Phase - In this phase of the evaluation process, all qualifications received will be reviewed by the procurement officer and/or designee to determine if the mandatory requirements of this RFQ have been satisfied. The response must be organized as required in the *Section 4 Content of Qualification*. Submissions will be reviewed to determine if:

1. Qualifications submission deadline met.
2. Required format followed:
 - a. Signed original qualifications along with the required three (3) copies of the complete qualifications
 - b. Electronic copy of complete qualifications, (if submitted by mail or delivery) including attachments in searchable Microsoft Office[®] format, preferably in Word[®] or Portable Document Format (PDF[®]) on flash drive or compact disc.
 - c. An electronic PUBLIC copy of complete qualifications, including attachments (as applicable)
4. Cover Sheet submitted.
5. Questionnaire answered.
6. Offeror Restatement of Minimum Qualifications and supporting information submitted.
7. Signed Offeror Certification of Minimum Qualifications submitted.
8. Management Plan submitted.
9. Résumés of Key Staff provided.
10. Writing Sample provided.
11. Cost Submission provided.
12. Signed Compensation and Hourly Rate Form submitted.
13. Rate Sheet submitted.
14. Signed Statement of Compliance submitted.
15. References provided.
16. Signed Contract Exceptions (if any) submitted.
17. Signed Proprietary Information Form submitted.
18. Signed Acknowledgement of RFQ Amendment(s), including the amendment with DFA's Responses to Questions, if any posted, submitted.
19. Required qualifications attachments provided, if any, and any additional information provided.

Failure to comply with these requirements may result in the qualifications being eliminated from further consideration. Those Offerors passing the Compliance Phase will be evaluated further.

Weight – The Compliance Phase of the evaluation is considered pass/fail.

Management Analysis Phase – In this phase of the evaluation process, the evaluation committee will utilize consensus scoring to determine numerical scores for each qualified response received. At this point in the evaluation process, Offeror identities are known to the Evaluation Committee.

Management (Weight/Value – 65 points) –The personnel, experience, subject matter expertise, and capabilities necessary to timely provide the BEAD Program Challenge Adjudication Services listed in this RFQ. The submission should demonstrate, where applicable, the Offeror’s ability to perform the service reflected by technical training, education and general experience of staff and a documented record of past performance of providing BEAD Program Challenge Adjudication Services.

The scores for the Management Analysis Phase will be reviewed and the top scoring Offeror, as well as all other Offerors with scores within five (5) points of the top scoring Offeror, will continue the evaluation process and have their pricing qualifications considered.

Price Analysis Phase – In this phase of the evaluation process, pricing is reviewed. DFA is seeking an all-inclusive blended hourly rate. The offeror should use its knowledge and experience to establish a blended hourly rate taking into consideration the staff member, their typical rate per hour, and the amount of time each works on the project and develop a blended hourly rate. The blended hourly rate will be charged for all services provided regardless of who is providing the services.

The blended hourly rate must be ALL-INCLUSIVE, meaning inclusive of ALL costs, including but not limited to, equipment/material, overhead, profit, vehicles, labor and supervision, postage and shipping, travel (unless required and preapproved by DFA) and all other costs associated with the requested services.

In addition to the blended hourly rate, Offeror should provide a Rate Sheet that provides the hourly rate for all parties working on (billing) for this project. The cost section should include:

1. **Price (Weight/Value – 35 points)** – All-inclusive blended hourly rate.
2. Offeror’s Fee schedule or rate sheet for all individuals.

Points will be awarded based on the all-inclusive blended rate only. The maximum points (35) will be assigned to the lowest priced qualifications which successfully completed the Management Analysis phase. All other qualifications will be assigned points based on the following formula:

$$\frac{X}{Y} * 35 = Z$$

X – Lowest proposed hourly rate
Y – Offeror’s proposed hourly rate
Z – Assigned points/score

Upon completion of the Price Analysis phase, the score from the price evaluation will be added to the scores from the Management Evaluation Phase to determine a total score for each offeror’s qualifications submission. Based on the combined score, the top scoring Offeror, as well as all

other Offerors with scores within five points of the top scoring Offeror, will be named as finalists and will be further evaluated.

Finalist Phase – In this phase of the evaluation process, the evaluation committee will seek to determine from among the finalists whose qualifications are the most advantageous to DFA. This phase consists of the following components:

1. Record of Past Performance of Similar Work (Experience and Qualifications) – From among the finalists, client references will be contacted to verify demonstration of an acceptable level of past performance for programs of a similar size and complexity as DFA. **Weight/Value – This component of the evaluation is considered pass/fail.**
2. Best and Final Offer – At DFA’s discretion, all finalists may be given the opportunity to provide a “best and final offer” relative to their financial qualifications. DFA will notify finalists if a “best and final offer” may be submitted and will establish a date and time for submission. Although a finalist is under no obligation to submit such an offer, any such “best and final” offer should include any applicable revised financial exhibits and must be signed by an appropriate representative of your company. If a finalist chooses to not make a “best and final offer”, the financial qualifications included in your company’s response to the Request for Qualifications will be considered as the “best and final offer”. NOTE: Unsolicited “best and final offers”, including but not limited to such offers submitted by non-finalists, will not be accepted. **Weight/Value – The numerical scores for the Cost factor from the Analysis Phase will be adjusted for any “best and final offer” received from a finalist.**

2.9 Right of Negotiation

Discussions and negotiations regarding price and other matters may be conducted with an Offeror who submits qualifications determined to have reasonable likelihood of being selected for award, but qualifications may be accepted without such discussions. DFA reserves the right to further clarify and/or negotiate with the Offeror evaluated best following completion of the evaluation of qualifications but prior to contract execution, if deemed necessary by DFA. DFA also reserves the right to move to the next best Offeror if negotiations do not lead to an executed contract with the best Offeror. DFA reserves the right to further clarify and/or negotiate with the Offeror on any matter submitted.

2.10 Award

Following evaluation, the Agency will issue a Notice of Intent to Award to the responsive and responsible Offeror whose qualifications is determined in writing, to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the RFQ. No other factors or criteria shall be used in the evaluation.

2.11 Notice of Intent to Award

The Notice of Intent to Award for this procurement will be made available to the public through posting on the Mississippi Contract/Procurement Opportunity Search Portal website and the agency website. All participating Offerors will be notified in writing of DFA’s intent to award a

contract and identify the selected Offeror.

2.12 Notice of Contract Award

Following issuance of the Notice of Intent to Award, successful negotiation of the contract, and approval of the contract by the PPRB and any other required entities, DFA will make a Notice of Contract Award available to the public.

2.13 Post Award Debriefing

An Offeror, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission, to be received by DFA within three (3) business days of notification of the contract award. A debriefing is a meeting and not a hearing; therefore, legal representation is not required. If an Offeror prefers to have legal representation present, the Offeror shall notify DFA and identify its attorney. DFA shall be allowed to schedule and/or suspend and reschedule the meeting at a time when a representative of the Office of the Mississippi Attorney General can be present.

2.13.1 Debriefing Request

A vendor, successful or unsuccessful, may request a post-award vendor debriefing, in writing, by U.S. mail or electronic submission, to be received by the agency within three (3) business days of notification of the contract award. A vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. If a vendor prefers to have legal representation present, the vendor shall notify the agency and identify its attorney. The agency shall be allowed to schedule and/or suspend and reschedule the meeting at a time when a representative of the Office of the Mississippi Attorney General can be present.

2.13.2 When Debriefing Should Be Conducted

Unless good cause exists for delay, the debriefing should occur within three (3) business days after receipt of the vendor request and may be conducted during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to the agency. ***DFA reserves the right to provide a written debriefing, in lieu of a face-to-meeting.***

2.13.3 Information to be Provided

At a minimum, the debriefing information shall include the following:

1. The agency's evaluation of significant weaknesses or deficiencies in the vendor's bid, bid, or qualifications, if applicable;
2. The overall evaluated cost or price, and technical rating, if applicable, of the successful vendor(s) and the debriefed vendor;
3. The overall ranking of all vendors, when any ranking was developed by the agency during the selection process;
4. A summary of the rationale for award; and,

5. Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

2.13.4 Information Not to Be Provided

The debriefing shall not include point-by-point comparisons of the debriefed vendor's bid, bid, or qualification with those of other offering vendors. Any written request by a vendor for nondisclosure of trade secrets and other proprietary data is subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 and §§ 75-26-1 through 75-26-19.

2.13.5 Summary

An official summary of the debriefing shall be included in the contract file.

SECTION 3. MINIMUM QUALIFICATIONS

The following minimum qualifications are mandatory. Failure to meet any of these requirements will result in disqualification of the qualifications Offeror submitted. Please respond by restating each requirement, including the number listed below, providing a response as requested. If, at any time during the evaluation process, in the opinion of DFA, the Offeror fails to prove that the proposing company meets any of these minimum qualifications, the qualifications will be disqualified from further evaluation. If this happens, the Offeror will be notified of the decision and will have an opportunity to provide additional information to prove the company does meet the minimum qualifications. It is incumbent upon the disqualified Offeror to respond timely and completely to any such notice as unreasonable delays and/or non-responsive submissions may result in the disqualification being upheld without further review.

3.1 Prior Experience: The Offeror must demonstrate in the response:

- a. At least five (5) years serving the telecommunications/broadband industry, with demonstrated experience in telecom/broadband infrastructure and service delivery.
- b. Prior experience adjudicating BEAD Program challenges on behalf of another State Broadband Office within the last three (3) years. Please provide the State Broadband Office, and the contact information for that office in your response as well as the dates of service.
- c. Experience in data analysis and report writing, including analysis of FCC Fabric, NBAM and other relevant sources of data. Briefly describe a project that required analysis of this information. Provide the name and contact information of the entity to which this analysis was provided.
- d. Proven ability to develop and implement standard operating procedures (SOPs). Briefly describe a project that required you to develop and implement SOPs. Provide the name and contact information of the entity for which these SOPs were provided.

3.2 Financial Stability or Solvency: Offeror must certify that it is financially solvent and must provide upon request from DFA, independently audited financial statements for the current or previous fiscal year, whichever is the most recent. If independently audited financial statements do not exist, Offeror must state the reason and, instead submit sufficient information to enable the Agency to assess the financial stability or solvency of the Offeror, such as financial statements, credit ratings, a line of credit, or other financial arrangements sufficient to enable the Offeror to be capable of meeting the requirements of this RFQ.
Pass/Fail Score

DFA cannot prepay for services rendered or goods delivered. Therefore, all invoices must be submitted in arrears.

3.3 References: Offeror must provide contact information for at least one (1) reference from another State Broadband Office for which it has provided BEAD Program Challenge Adjudication Services. Respondent understands that it may be disqualified if the agency cannot complete reference scoring *within 48 hours of initial contact* with the reference. If possible, Offeror is encouraged to submit additional references.

The DFA may make reasonable investigations deemed necessary and proper to determine the ability of the Offeror to perform the work, and the Offeror shall furnish to DFA all information for this purpose that may be requested. DFA reserves the right to reject any qualifications if the evidence submitted by, or investigation of, the Offeror fails to satisfy the agency that it is properly qualified to carry out the obligations of the Contract and to complete the work described herein. **Pass/Fail**

3.4 Conflict of Interest: No Active Work with or for any Internet Service Providers in the state of Mississippi: Vendor must certify that neither it nor its employees are actively working with or for and will not work with or for any internet service providers in Mississippi for the term of any awarded contract.

3.5 Insurance

3.5.1 Each successful Offeror shall, at its own expense, carry a level of insurance(s), including deductible, to cover error and omissions, improper judgment, or negligence appropriate for the magnitude of the engagement.

3.5.2 All insurances policies will list the State of Mississippi as an additional insured.

3.5.3 All insurance policies shall be issued by companies authorized to do business under the laws of the State of Mississippi.

3.5.4 A certificate of insurance providing the aforesaid coverage shall be furnished to DFA upon request. DFA reserves the right to request from carriers, certificates of insurance regarding the required coverage.

3.5.5 Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance

3.5.6 Offeror shall ensure that should any of the above-described policies be cancelled before the expiration date thereof, or if there is a material change, potential exhaustion of aggregate limits or intent not to renew insurance and/or bond coverage(s), that written notice will be delivered to the Agency.

3.5.7 There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance and/or bond coverage(s) to the Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by the Agency.

SECTION 4. CONTENT OF QUALIFICATIONS

Each Offeror must submit qualifications in writing and in the style and format outlined herein. DFA discourages overly lengthy and costly qualifications. In preparing qualifications response, all narrative portions should be straightforward, detailed, and precise.

Qualifications must be typewritten on 8.5” x 11” paper (charts or graphs may be provided on legal-sized paper) using Times New Roman font type, font size 12, with standard half-inch margins. Appendices, as well as samples and templates required of the qualifications need not comply with font and margin restriction. **Qualifications should not exceed twenty (20) single sided pages. The following are exempt from the page requirement: Cover Sheet, signed Certification of Minimum Qualifications (Appendix E), Key Staff Resumes (however they should not exceed ten (10) pages total), Writing Sample, Signed Compensation and Hourly Rate Form (Section 8), References (Appendix B), all Appendices included in Tab 6.**

Responsive qualifications shall consist of two (2) separate sections: Management and Cost. Although Cost is generally required to be submitted blind, the PPRB approved DFA’s request to openly review Cost at the June 5, 2024, Board Meeting. As a result, **NO PORTION OF THESE QUALIFICATIONS IS REQUIRED TO BE BLIND.**

Hard copies of the Qualifications should be submitted in three ring binders. The sections of responsive qualifications shall be comprised as listed below. It is the Offeror’s responsibility to organize and separate the information into sections and tabs accordingly.

SECTION I

MANAGEMENT

Tab 1 –Cover Sheet (Appendix A): Failure to complete and/or sign may result in Respondent being determined nonresponsive.

Tab 2– Minimum Qualifications: Minimum qualifications are used to determine Offeror’s responsiveness and ability to provide the required services.

- A. Include Offeror’s restatement of the Minimum Qualifications and supporting documentation.
- B. Offeror’s signed Certification of Minimum Qualifications (Appendix E)
- C. Vendor Questionnaire (Section 6)- In preparing your written response to the questionnaire, you are required to repeat each question, including the number, or requirement followed by your response. Please provide complete answers and explain all issues in a concise, direct manner.

Tab 3– A Detailed Written Management Plan: The BEAM BEAD Program Challenge Adjudication services must be provided in accordance with NTIA BEAD Program Challenge requirements, Mississippi’s 5 Year Plan, Mississippi’s Initial Proposal Volume 1, and any other Mississippi BEAM BEAD Program Challenge related requirements and or requests. Mississippi’s 5 Year Plan and Initial Proposal Volume 1 are located at on the BEAM website at www.beam.ms.gov. Offerors should review these documents in preparation for submitting its detailed plan of how it will perform

the requested services in its written Management Plan.

The written Management Plan should be organized as follows:

- I. **Qualifications-** Please describe the firm's qualifications to provide the required services. Your description should include, but is not limited to:
 - a. Brief Introduction Firm Background- A brief statement of the company's background and experience, with specific attention to the requested scope of work.
 - b. Demonstrated Experience in telecom/broadband infrastructure and service delivery.
 - c. Statements of prior work in adjudicating BEAD Program challenges on behalf of another State Broadband Office.
 - d. An introduction to the Mississippi BEAD Program Challenge Adjudication Team including Resumes of Key Staff. Provide a résumé and a brief summary of the background and relevant experience (including any special training or designations) of key staff members who will be assigned to render services to BEAM. Include what role(s) and responsibilities each individual will fulfill throughout the length of the contract. Also, specifically identify the project manager and/or executive who will serve as the primary contact for the Agency. Provide each person's total number of years of experience related to the services being requested in the RFQ. **Resumes and staff qualifications should not exceed 10 pages.**

- II. **Analysis & Methodology** Describe the firm's plan to provide BEAM BEAD Program Challenge Adjudication Services. Offeror should provide a management summary about how Offeror will provide the requested services and manage Mississippi's BEAD Program Challenge Process. The plan should include, but is not limited to, the following:
 - a. A description of relevant data analysis and methodology.
 - b. Expertise in data analysis and report writing, including analysis of FCC Fabric, NBAM and other relevant sources of data.
 - c. Familiarity with a variety of different OSS/BSS/NMS/NPS systems (including a list of systems with which the Offeror has worked in the past).
 - d. Expertise in interpreting and verifying exports and/or direct integrations with various OSS/BSS/NMS/NPS systems.
 - e. Relevant experience interpreting, evaluating, and verifying challenge and rebuttal evidence. Please list challenge types and relevant evidence accepted, rejected, or requested clarification.

- III. **Timeline & Reporting** Describe the firm's timeline for reporting. The plan should include, but is not limited to, the following:
 - a. Proposed standard operating procedures (SOPs), timeline and reporting capabilities for analyzing challenges.

- b. Proven ability to develop and implement standard operating procedures (SOPs).

IV. Writing Sample Provide an example of the written documentation and reports in the format suggested by the Offeror. DFA/BEAM must approve the format of all written reports and federal submissions of the winning Offeror, prior to final submission.

SECTION II

COST

Tab 4 – Signed Compensation and Hourly Rate Form (Section 8) - Failure to complete and/or sign the Compensation and Hourly Rate Form may result in Offeror being determined non-responsive. **Modification or addition to any portion of the Form may be cause for rejection of the qualifications.**

Tab 5 – References- Each vendor must furnish at least one (1) reference as described in *Minimum Qualifications*. The reference(s) (*Appendix B*) must be a State Broadband Office familiar with the Offeror’s abilities providing BEAD Program Challenge Adjudication Services.

Tab 6 – Appendices- Please include all remaining documents and Appendices. Ensure each has been signed if a signature is required.

1. Signed Acknowledged Amendments
2. Signed Contract Exceptions (Section 9)
3. Signed Proprietary Information Form (Appendix D)

SECTION 5. SCOPE OF SERVICES

The awarded Offeror will be responsible for the providing BEAD Program Challenge Adjudication Services. It will receive, analyze, fully adjudicate all challenges and submit all required and requested reports in accordance with the NTIA and BEAM challenge process, regulations and requirements. The successful Offeror will also complete any other requirements and other BEAD related BEAM requests. The scope of services includes, but is not limited to the following:

1. **Initial Proposal Volume I:** Demonstrate a detailed knowledge of Mississippi's Initial Proposal Volume 1 and the specific challenge process modifications that will govern Mississippi's challenge process.
2. **Analyze Challenges:** Review and analyze all challenges and rebuttals submitted through the existing portal provided by Ready.net and used for the collection of challenges and rebuttals as detailed in the State of Mississippi's Initial Proposal Volume I as approved by NTIA.
3. **Evidence Review and Recommendation:** For each challenge, recommend one of the following actions:
 - Acceptance - The challenge is valid and supported by sufficient evidence.
 - Rejection - The challenge is invalid or lacks sufficient evidence.
 - Additional Evidence Required - More information is needed to determine validity.
4. **Additional Evidence Gathering:** If additional evidence is required, the respondent will be responsible for:
 - Developing a plan to gather the necessary data.
 - Collecting and analyzing the additional evidence.
 - Recommending either acceptance or rejection of the challenge.
 - Creating a report summarizing the findings.
5. **Fabric Version Analysis:** Analyze changes between Fabric versions 3 and 4 and anticipate potential changes in future versions.
6. **Deliverables:**
 - A detailed plan for analyzing challenges.
 - Weekly progress reports.
 - A final report summarizing all findings and recommendations for each challenge in a format approved by BEAM.
 - Any additional reports generated from the collection of supplementary evidence.
 - A report analyzing the changes between various Fabric versions and the anticipated impact of future versions.

7. **Additional Work as Requested:** Any other requirements and/or other BEAD related BEAM requests/requirements.

SECTION 6. QUESTIONNAIRE

1. Provide the name, title, mailing address, e-mail address, and telephone number of the contact person for these qualifications.
2. State the full name of the proposing company and provide the address and telephone number of the principal place of business.
3. List the office that will service DFA/BEAM. If it is located at a different address than the home office, provide the complete address, phone number, and facsimile number for this office.
4. Describe your organizational structure. Indicate whether your company operates as a corporation, partnership, individual, etc. If it is incorporated, include the state in which it is incorporated, and list the names and occupations of those individuals serving on your company's Board of Directors.
5. List the name and principal occupation or business of any person or entity owning 10% or more of your company.
6. Describe any ownership or name changes your company has been through in the past three years. Are any ownership or name changes planned?
7. Describe any changes in the organizational structure that have occurred within your company over the past twenty-four months or are anticipated during the next twenty-four months including, but not limited to, addition or elimination of product or business lines, mergers, company acquisitions, etc.
8. How long has the Offeror been providing BEAD Program Challenge Adjudication Services? Please indicate the month and year in which the company was established and the year the company began providing BEAD Program Challenge Adjudication Services.
9. What was the average number of employees in your firm for the past twelve months? Has this average changed in the past three years?
10. State if the proposed account executive, any officers or principals and/or their immediate families are, or have been within the preceding twelve months, employees of the State of Mississippi.
11. State if the proposed account executive, any officers or principals and/or their immediate families are, or have been within the preceding twelve months, employees of any Internet Service Provider (ISP) in the state of Mississippi.
12. Provide a brief description of any outside vendors or subcontractors that will be involved in providing key services detailed within your qualifications. Please include the term of your current contract with each vendor or subcontractor. Describe the nature of the relationship with the subcontractor, including any ownership interest.

13. Has your company ever been involved in a lawsuit involving any area covered by this RFQ? If yes, provide details including dates and outcomes.
14. During the past five (5) years, has your company, related entities, principals or officers ever been a party in any material criminal litigation, whether directly related to this RFQ or not? If so, provide details including dates and outcomes.
15. Has your company been cited or threatened with citation within the last three years by federal or state regulators for violations of any federal, state, or local law or federal, state or local regulation? If the answer is yes, please describe the circumstances in detail.
16. Confirm that your company is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transaction by any federal department or agency, or by any political subdivision or agency of the State of Mississippi.
17. Provide a complete résumé for each staff member (in Tab 3, I(d) of your qualifications) who will be assigned to render services to DFA, including detailed information on any special training or designations.
18. Please confirm this RFQ response is valid for at least 180 days subsequent to the date of submission.
19. Provide a list of entities for which you have provided similar services. Include a contact name, address, telephone number and email address.
20. Regarding each client for which you have provided BEAD Challenge Adjudication services – please state the total number of challenges reviewed and the number of recommendations you provided that have been reversed or rejected by NTIA. Include:
 - a. The name of the client
 - b. Your recommendation
 - c. The basis/reason for the rejection/reversal by NTIA
 - d. The final decision regarding the rejection/reversal.

SECTION 7. REFERENCES

All the requested references should be provided using the References Form in Appendix B. The Offeror must document, through their references, that they have the experience required to meet the minimum vendor requirements. DFA staff must be able to reach at least (1) references for a qualifications submission within 48 hours of initial contact or the qualifications may be considered non-responsive.

1. List at least one (1) and up to three (3) State Broadband Offices for which Offeror is providing or has provided BEAD Program Challenge Adjudication services similar to those requested in this RFQ. For each, please provide:
 - a. Client name, include the name, title, address, e-mail address, and telephone number of a person whom we may contact to confirm as needed,
 - b. The type of BEAD Program Challenge Adjudication services your firm provided to the client, and
 - c. Period of time retained as a client.

SECTION 8. COMPENSATION AND HOURLY RATE

DFA’s requirements regarding compensation are as follows:

1. The all-inclusive blended hourly rate, except when otherwise indicated, shall constitute the entire compensation due to the Offeror for services and all of the Offeror’s obligations hereunder regardless of the difficulty, materials, or equipment required. The blended hourly rate includes, but is not limited to, all applicable taxes, fees, general office expense, travel, overhead, profit, and all other direct and indirect costs, incurred or to be incurred, by the Offeror. DFA shall not provide any prepayments or initial deposits in advance of services being rendered. Only those services agreed to by contract shall be considered for reimbursement/compensation by DFA. The blended hourly rate agreed to for services provided for this contract are firm for the duration of this contract and are not subject to escalation for any reason, unless this contract is duly amended.
2. The payment of an invoice by DFA shall not prejudice DFA's right to object or question any invoice or matter in relation thereto. Such payment by DFA shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. The Offeror’s invoice or payment may be subject to further reduction for amounts included in any invoice or payment theretofore made which are determined by DFA, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment or increased for underpayment on subsequent invoices. For any amounts which are or shall become due and payable to DFA by the Offeror, DFA reserves the right to (1) deduct from amounts which are or shall become due and payable to the auditor under the contract between the parties; or (2) request and receive payment directly from the auditor within fifteen (15) days of such request, at DFA’s sole discretion.

HOURLY RATE FOR BEAD PROGRAM CHALLENGE ADJUDICATION SERVICES

I understand that the estimated budget for these services is \$400,000.00. Our firm’s all-inclusive blended hourly rate, to provide BEAD Program Challenge Adjudication Services is:

\$ _____ / Hour

I have also attached an hourly rate sheet, listing the title, classification, hourly rate, of the staff necessary to provide these services. I understand that DFA may review this rate sheet when determining whether the blended rate is a fair rate for BEAD Program Challenge Adjudication Services.

*I understand that points will be awarded **based only on the all-inclusive blended hourly rate submitted** and not the rate sheet submitted to support the blended hourly rate.*

BEAM will use objective scoring to award points for cost. The Offeror with the lowest all-inclusive blended hourly rate (Price) will receive the full value of designated 35 points for cost. Remaining offerors will be assigned points according to the following formula:

$$(X/Y) * 35 = Z$$

X=Lowest Hourly Rate
Y=Offeror's Hourly Rate
Z=Offeror's Assigned Points

By submission of this response, I hereby certify that the blended hourly rate submitted in response to this RFQ has been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to those fees, the intention to submit a response, or the methods or factors used to calculate the fees proposed. By submission of this response, I hereby certify that *Offeror **has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. I further certify that I am authorized to enter into binding agreements on behalf of the Offeror.*

A signature is required below.

Name

Date

Title

Company

(Please have the appropriate officer sign this statement and include it as a part of your solicitation response)

SECTION 9. COMPLIANCE AND CONTRACT EXCEPTIONS

By submitting a response to this RFQ Offeror confirms that it will comply with the requirements of the Scope of Services. A *Draft BEAD Program Challenge Adjudication Services Contract* is attached hereto for your review. If you object to any of the standard terms and conditions included in the draft contract provided in *Appendix C – Draft BEAD Program Challenge Adjudication Services Contract*, please note and explain your objections in the form provided below.

This Form MUST be COMPLETED and SIGNED.

Failure to indicate any Contract exception will be interpreted as the respondent’s intent to comply fully with the requirements as written. Conditional or qualified qualifications, unless specifically allowed, shall be subject to rejection in whole or in part.

Contract Clause	Brief Explanation of Exception
<i>(Reference specific contract paragraph)</i>	<i>(Short description of exception being made)</i>
1	
2	
3	
4	
5	

 Signature of Authorized Official
(No stamped signature)

 Date

APPENDIX A – QUALIFICATIONS COVER SHEET

Offeror Name: _____

Qualifications are to be submitted on or before **Wednesday, July 24, 2024, by 10:00AM CDT.**

Offeror Representative	
Offeror Representative Title	
Offeror Representative Mailing Address	
Offeror Representative Mailing City, State, Zip	
Offeror Representative Telephone:	
Offeror Representative E-Mail Address:	

Please identify the Office/Branch which will provide services for DFA if different from above:

Office Contact Person	
Office Contact Person Telephone Number	
Office Contact Person Email Address	
Office Contact Person Physical Address	
Office Contact Person City, State, Zip	
Office Contact Person Mailing Address	
Office Contact Person City, State, Zip	

Are you currently registered as a Supplier in MAGIC? ___ YES ___ NO

If known, what is your supplier number? _____

Are you currently registered with PayMode? ___ YES ___ NO

Certifications and Acknowledgements

By signing below, the company Representative certifies that he/she has authority to bind the company, and further acknowledges and certifies on behalf of the company:

1. That he/she has thoroughly read and understands the Request for Qualifications and Attachments thereto;
2. That the company meets all requirements and acknowledges all certifications contained in the Request for Qualifications and Attachments thereto;
3. That the company agrees to all provisions of the Request for Qualifications and Attachments thereto including, but not limited to, be included in any contract resulting from this RFQ (Appendix C);
4. That the company will perform the services required at the rates quoted and that the pricing submitted will remain firm for the contract term;
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date;
6. That the Offeror has submitted or will provide copies of the required insurance certificates, and should the Offeror be awarded the contract, it will add the State of Mississippi as an additional insured;
7. The Contractor represents that it is licensed or authorized to provide the proposed services in the State of Mississippi and that its workers are licensed, certified **and/or** possess the requisite credentials to perform BEAD Program Challenge Adjudication Services;
8. The Contractor understands that the State of Mississippi utilizes the Mississippi Accountability System for Government Information and Collaboration (MAGIC) system to manage contracts. Additionally, electronic payments are issued through an electronic portal called PayMode. In order to do business with the State of Mississippi, all Suppliers must be registered with both systems. By submitting a qualifications, the Offeror certifies that it is registered with both systems or if not already registered, that it will do so within seven (7) business days of being notified by DFA Office of Procurement and Contracts that it has been awarded a contract and,
9. **NON-DEBARMENT:** By submitting qualifications, the Offeror certifies that it is not currently debarred from submitting Qualifications for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting Qualifications for contracts issued by any political subdivision or agency of the State of Mississippi.
10. **INDEPENDENT PRICE DETERMINATION:** The Offeror certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other vendor or competitor relating to those prices, the intention to submit a

proposal, or the methods or factors used to calculate the prices bid/offered.

11. **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES:** The prospective contractor represents as a part of such Contractor's proposal that such Contractor *has not* retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
12. **REPRESENTATION REGARDING CONTINGENT FEES:** Contractor represents that it *has not* retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or other contingent fee, except as disclosed in the Contractor's proposal.
13. **REPRESENTATION REGARDING GRATUITIES:** Contractor represents that it *has not* violated, *is not* violating, and promises that it *will not* violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *PPRB OPSCR Rules and Regulations*.

Company Name: _____

Printed Name of Representative: _____

Date: _____

Signature: _____

Note: *Failure to sign the Qualifications Cover Sheet and Certifications and Acknowledgements may result in the Qualifications/Proposal being rejected as non-responsive. Modifications or additions to any portion of this document may be cause for rejection of the Qualifications/Proposal.*

APPENDIX B - REFERENCES

Client Name	
Contact Name and Title	
Contact Address	
Contact Telephone Number	
Email Address	
Type of work provided to the client	
Contract effective dates for the time period(s) services provided to client	

Client Name	
Contact Name and Title	
Contact Address	
Contact Telephone Number	
Email Address	
Type of work provided to the client	
Contract effective dates for the time period(s) services provided to client	

Client Name	
Contact Name and Title	
Contact Address	
Contact Telephone Number	
Email Address	
Type of work provided to the client	
Contract effective dates for the time period(s) services provided to client	

Additional references to meet the requirements of the procurement should be submitted on a separate page.

**APPENDIX C - DRAFT BEAD PROGRAM CHALLENGE
ADJUDICATION SERVICES CONTRACT**



STATE OF MISSISSIPPI
GOVERNOR TATE REEVES

DEPARTMENT OF FINANCE AND ADMINISTRATION

LIZ WELCH
EXECUTIVE DIRECTOR

BEAD PROGRAM CHALLENGE ADJUDICATION SERVICES CONTRACT

This BEAD Program Challenge Adjudication Services Contract (Contract) is made by and between the State of Mississippi Department of Finance and Administration (DFA), Office of Broadband Expansion and Accessibility of Mississippi (BEAM), and [Contractor], (Contractor) effective September 5, 2024, under the following terms and conditions under which Contractor agrees to provide services to DFA.

1. Scope of Services

Contractor will provide BEAD Program Challenge Adjudication Services in accordance with the Request for Qualifications for BEAD Program Challenge Adjudication Services, RFx # 3140003911 issued July 1, 2024. The services include but are not limited to:

The awarded Offeror will be responsible for the providing BEAD Program Challenge Adjudication Services. It will receive, analyze, fully adjudicate all challenges and submit all required and requested reports in accordance with the NTIA and BEAM challenge process, regulations and requirements. The successful Offeror will also complete any other requirements and other BEAD related BEAM requests. The scope of services includes, but is not limited to the following:

1. **Initial Proposal Volume I:** Demonstrate a detailed knowledge of Mississippi's Initial Proposal Volume 1 and the specific challenge process modifications that will govern Mississippi's challenge process.
2. **Analyze Challenges:** Review and analyze all challenges and rebuttals submitted through the existing portal provided by Ready.net and used for the collection of challenges and rebuttals as detailed in the State of Mississippi's Initial Proposal Volume I as approved by NTIA.
3. **Evidence Review and Recommendation:** For each challenge, recommend one of the following actions:
 - Acceptance - The challenge is valid and supported by sufficient evidence.
 - Rejection - The challenge is invalid or lacks sufficient evidence.
 - Additional Evidence Required - More information is needed to determine validity.

4. **Additional Evidence Gathering:** If additional evidence is required, the respondent will be responsible for:
 - Developing a plan to gather the necessary data.
 - Collecting and analyzing the additional evidence.
 - Recommending either acceptance or rejection of the challenge.
 - Creating a report summarizing the findings.
5. **Fabric Version Analysis:** Analyze changes between Fabric versions 3 and 4 and anticipate potential changes in future versions.
6. **Deliverables:**
 - A detailed plan for analyzing challenges.
 - Weekly progress reports.
 - A final report summarizing all findings and recommendations for each challenge in a format approved by BEAM.
 - Any additional reports generated from the collection of supplementary evidence.
 - A report analyzing the changes between various Fabric versions and the anticipated impact of future versions.
7. **Additional Work as Requested:** Any other requirements and/or other BEAD related BEAM requests/requirements.

2. **Contract Term**

- A. The effective date of this Contract will be September 5, 2024. This Contract's term will be for one (1) year with no optional renewals.
- B. All records and information provided by DFA to Contractor are the sole property of DFA and shall be returned to DFA within thirty (30) days of the termination date of this Contract.
- C. Upon termination of this Contract, Contractor shall cooperate with DFA and the new Contractor during the transition of DFA's business to the new Contractor. Upon request from DFA, Contractor shall provide all DFA information maintained by Contractor in a time frame specified by DFA.

3. **Consideration**

DFA agrees to compensate Contractor for services approved by DFA and performed by Contractor under the terms of this Contract as follows:

- A. The fees listed in **Exhibit A – Pricing** shall constitute the entire compensation due to Contractor for services and all of Contractor's obligations hereunder regardless of the difficulty, materials, or equipment required. DFA shall not provide any prepayments or initial deposits in advance of services being rendered. Payment for any and all services provided by Contractor to DFA shall be made only after said services have been duly performed and properly invoiced. The fees listed in **Exhibit A – Pricing** of this contract

are firm for the duration of this contract and are not subject to escalation for any reason, unless this Contract is duly amended.

- B. Contractor must submit all invoices, in a form acceptable to DFA (provided that such acceptance will not be unreasonably withheld) with all the necessary supporting documentation, prior to any payment to Contractor. No additional compensation will be provided by DFA for any expense, cost, or fee not specifically authorized by this Contract, or by written authorization from DFA.
- C. The payment of an invoice by DFA shall not prejudice DFA's right to object or question any invoice or matter in relation thereto. Such payment by DFA shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. Contractor's invoice or payment may be subject to further reduction for amounts included in any invoice or payment theretofore made which are determined by DFA, on the basis of audits, not to constitute allowable costs.

4. ***Availability of Funds***

It is expressly understood and agreed that the obligation of DFA to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Contract are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to DFA, DFA shall have the right upon ten (10) working days written notice to Contractor, to terminate this Contract without damage, penalty, cost or expenses to DFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

5. ***E-Payment***

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.

6. ***Paymode***

Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Contract. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

7. Recovery of Money

Whenever, under the Contract, any sum of money shall be recoverable from or payable by Contractor to DFA, the same amount may be deducted from any sum due to Contractor under the Contract or under any other Contract between Contractor and DFA. The rights of DFA are in addition and without prejudice to any other right DFA may have to claim the amount of any loss or damage suffered by DFA on account of the acts or omissions of Contractor.

8. *Applicable Law*

The Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

9. *Compliance with Laws*

Contractor understands that DFA is an equal opportunity employer and, therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and Contractor agrees during the term of this Contract that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

10. Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the Contract.

11. Anti-Assignment/Subcontracting

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor’s special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without

such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

12. Confidentiality

Notwithstanding any provision to the contrary contained herein, it is recognized that DFA is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 et seq. If a public records request is made for any information provided to DFA pursuant to the contract and designated by Contractor in writing as trade secrets or other proprietary confidential information, DFA shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. DFA shall not be liable to Contractor for disclosure of information required by court order or required by law.

13. Disclosure of Confidential Information

In the event that either party to this Contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 et seq.

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this contract.

14. Transparency

This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Mississippi Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential Contractor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

15. Contractor Personnel

DFA shall, throughout the life of the Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If DFA reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to DFA in a timely manner and at no additional cost to DFA. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

16. Independent Contractor

Contractor shall, at all times, be regarded as and shall be legally considered an Independent Contractor and shall at no time act as an agent for DFA. Nothing contained herein shall be deemed or construed by DFA, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between DFA and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of DFA or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of DFA and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of DFA. No act performed or representation made, whether oral or written, by Contractor with respect to third parties shall be binding on DFA. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of DFA; and DFA shall at no time be legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. DFA shall not withhold from the Contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, DFA shall not provide to Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by DFA for its employees.

17. E-Verification

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this Contract may subject Contractor to the following: (i) termination of this Contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such

cancellation/termination being made public; (ii) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or, (iii) both. In the event of such cancellations/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

18. Authority to Contract

Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this Contract; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this Contract is not restricted or prohibited by any loan, security, financing, contractual, or other contract of any kind; and, (d) notwithstanding any other provision of this Contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

19. Debarment and Suspension

Contractor certifies to the best of its knowledge and belief, that it: (i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any Federal department or agency or any political subdivision or agency of the State of Mississippi; (ii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; (iii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iv) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of these offenses enumerated in paragraphs two (2) and three (3) of this certification; and, (v) Has not, within a three-year period preceding this proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

20. Modification or Renegotiation

This Contract may be modified only by written Contract signed by the parties hereto. The parties agree to renegotiate the Contract if federal, state and/or DFA revisions of any applicable laws or regulations make changes in this Contract necessary.

21. Procurement Regulations

This Contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at www.DFA.ms.gov.

22. **Representation Regarding Contingent Fees**
Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
23. **Representation Regarding Gratuities**
Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.
24. **Termination upon Bankruptcy**
This Contract may be terminated in whole or in part by DFA upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total Contract price.
25. **Termination for Convenience**
- A. Termination. *The Agency Head or designee may, when the interests of the State so require, terminate this Contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the Contract terminated and when termination becomes effective.*
- B. Contractor's Obligations. *Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.*
26. **Termination for Default**
- A. Default. *If Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly*

- perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.*
- B. *Contractor's Duties. Notwithstanding termination of the Contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.*
- C. *Compensation. Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.*
- D. *Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the Contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience. (As used in this paragraph of this clause, the term "subcontractor" means a subcontractor at any tier).*
- E. *Erroneous Termination for Default. If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (D) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if*

the contract contains a clause providing for termination for convenience for the State, be the same as if the notice of termination had been issued pursuant to a termination for convenience.

- F. *Additional Rights and Remedies.* *The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.*

27. Stop Work Order

A. *Order to stop work.* *The Chief Procurement Officer, may by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either (i) cancel the stop work order; or (ii) terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.*

B. *Cancellation or Expiration of the Order.* *If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the Contract shall be modified in writing accordingly, if: (i) the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Contract; and, (ii) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.*

C. *Termination of Stopped Work.* *If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.*

D. *Adjustment of Price.* *Any adjustment in Contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this Contract.*

28. Price Adjustment

A. *Price Adjustment Methods.* *Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:*

- a. by agreement on a fixed price adjustment before commencement of the additional performance;
- b. by unit prices specified in the contract;
- c. by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- d. by a price escalation clause.

B. Submission of Cost or Pricing Data. Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

29. Oral Statements

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the Contract must be made in writing by DFA and agreed to by Contractor.

30. Ownership of Documents and Work Papers

DFA shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Contract which is the subject of this Contract, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to DFA upon termination or completion of the Contract. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from DFA and subject to any copyright protections.

31. *Trade Secrets, Commercial and Financial Information*

It is expressly understood that Mississippi law requires that the provisions of this Contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

32. Third-Party Action Notification

Contractor shall give DFA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Contract.

33. Indemnification

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and

nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this contract. In the State's sole discretion upon approval of the Mississippi Attorney General, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

34. *Approval*

It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

35. **Change in Scope of Work**

DFA may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by DFA and Contractor. If Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify DFA in writing of this belief. If DFA believes that the particular work is within the scope of the Contract as written, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the Contract.

36. **Attorney's Fees and Expenses**

Subject to other terms and conditions of this Contract, in the event Contractor defaults in any obligations under this Contract, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this Contract or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.

37. **Failure to Enforce**

Failure by DFA at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of DFA to enforce any provision at any time in accordance with its terms.

38. Record Retention and Access to Records

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Contract shall be retained by Contractor for three (3) years after final payment is made under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

39. Right to Audit

Contractor shall maintain such financial records and other records as may be prescribed by DFA or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by DFA, whichever event occurs first. These records shall be made available for inspection during regular business hours and with reasonable advance notice during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

40. Right to Inspect Facility

The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the State.

41. Severability

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the Contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

42. Licenses

Contractor shall ensure that the following professional licenses are maintained and current during the term of the contract, Applicable licenses, but not necessarily limited to, are: [licenses]. Contractor may utilize the license of an approved sub-contractor to fulfill this requirement. Contractor shall, upon the expiration of a license, furnish to DFA a current license.

43. Insurance

Contractor, at its own expense, shall carry a level of insurance(s), including deductible, to cover error and omissions, improper judgment, or negligence appropriate for the magnitude of the engagement and shall list the State of Mississippi as an additional insured.

44. Additional Federal Requirements

The Contract shall be governed by the federal requirements contained in 2 C.F.R. Pt. 200, App. II, where applicable, or not otherwise addressed herein. Additionally, the Contract shall be governed by Exhibit D, "Federal Required Clauses" and Exhibit E, "Department of Commerce Financial Assistance Standard Terms and Conditions." If subsequent federal requirements are identified, the Contract shall be amended to include such requirements.

45. Notices

All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth in this section. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

If to DFA:

Attention: Terri Ashley
Department of Finance and Administration
Office of Procurement and Contracts
P O Box 267
Jackson, Mississippi 39205

If to Contractor:

Attention: X
X
X
X

46. Priority

The Contract consists of this agreement including Exhibit A, **Pricing**, the response qualifications submitted by Contractor dated [date] (hereinafter "Qualifications" and attached as Exhibit B) and the Request for Qualifications for the **BEAD Program Challenge Adjudication Services, RFX #3140003911 issued July 1, 2024** (hereinafter "RFQ" and attached as Exhibit C). Any ambiguities, conflicts or questions of interpretation of this Contract shall be resolved by first, reference to this agreement and, if still unresolved, by reference to the RFQ and, if still unresolved, by reference to the Qualifications. Omission of any term or obligation from this agreement or attached Exhibits A, B and C shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere in this Contract.

Witness our signatures, on the date first written.

[Contractor Name]

Department of Finance and Administration

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

DRAFT CONTRACT

**EXHIBIT A
PRICING**

DRAFT CONTRACT

EXHIBIT B

**CONTRACTOR'S RESPONSE TO THE DEPARTMENT OF FINANCE AND
ADMINISTRATION'S REQUEST FOR QUALIFICATION FOR BEAD PROGRAM
CHALLENGE ADJUDICATION SERVICES, RFX #3140003911 ISSUED JULY 1, 2024**

DRAFT CONTRACT

EXHIBIT C

**THE DEPARTMENT OF FINANCE AND ADMINISTRATION'S REQUEST FOR
QUALIFICATION FOR BEAD PROGRAM CHALLENGE ADJUDICATION
SERVICES, RFX #3140003911 ISSUED JULY 1, 2024**

DRAFT CONTRACT

EXHIBIT D

FEDERAL REQUIRED CLAUSES

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Contractor shall take all affirmative steps necessary to assure that minority business, women's business enterprises, and labor surplus area firms are used, when possible, including those steps listed in 2 CFR § 200.321(b).

Domestic Preferences for Procurements

To the extent applicable, appropriate, and consistent with law, Contractor certifies that, during the term of this Contract, it will comply with applicable requirements of 2 C.F.R. § 200.322.

Procurement of Recovered Materials

Contractor certifies that, during the term of this Contract, it will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act in accordance with the guidelines and requirements of 2 C.F.R. § 200.323.

Environmental Compliance

1. The Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.).
 - a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - b. The Contractor agrees to report each violation to DFA and understands and agrees that DFA will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by NTIA.

2. The Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 § et seq.).
 - a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 § et seq.).
 - b. The Contractor agrees to report each violation to DFA and understands and agrees that DFA will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by NTIA.

Byrd Anti-Lobbying Amendment

1. Contractors who apply or bid for an award of \$100,000 or more shall submit to MTC a Certification Regarding Lobbying. Each tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
2. Contractor shall include a requirement to comply with these regulations (31 U.S.C. § 1352) in any subcontractor or lower tier covered transaction it enters into.

Covered Telecommunications Equipment

Contractor certifies that during the term of this Contract, it will comply with Public Law 115-232, section 889, in accordance with the guidelines and requirements of 2 C.F.R. § 200.216, where such guidelines are applicable.

Build America, Buy America Act

Contractor certifies that during the term of this Contract, it will comply with the Public Law 117-58 division G, title IX, subtitle A, part I, sections 70911 through 70917, in accordance with the guidelines set in 2 C.F.R. Part 184

Additional Federal Requirements

The Contract shall be governed by the federal requirements contained in 2 C.F.R. Pt. 200, App. II, where applicable, or not otherwise addressed herein. Additionally, the Contract shall be governed by the attached Exhibit E "Department of Commerce Financial Assistance Standard Terms and Conditions." If subsequent federal requirements are identified, the Contract shall be amended to include such requirements.

EXHIBIT E

**DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS
AND CONDITIONS**

DRAFT CONTRACT

APPENDIX D – PROPRIETARY INFORMATION FORM

At the time their qualifications are submitted, Offeror has the option to provide a full and complete qualifications submission with any information Offeror deems to be confidential commercial and financial information of a proprietary nature and/or trade secrets redacted in black. This will serve as a Public Copy to be released in the event of a public records request. *An electronic copy of this redacted proposal should be marked PUBLIC and included as a part of the electronic submission along with the unredacted version.* Failure to submit a Public Copy may result in confidential/proprietary information being released in a public records request.

For all procurement contracts awarded by state agencies, the provisions of the contract which contain the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret, or confidential commercial or financial information, and shall be available for examination, copying, or reproduction.

Please mark one of the following as applicable to your proposal submission:

- Offeror **has provided** a Public Copy of its qualifications submission, along with a statement identifying which section(s) or information has been redacted and the specific statutory authority for the exemption(s). Offeror understands that DFA may release the Public Copy without any further notice to the Offeror. Offeror further understands that, should it wish for the entire proposal to be kept from release as a public record, it can file a request for protective order in Hinds County Chancery Court within twenty-one (21) calendar days following the proposal submission deadline and must provide notice of the filing to DFA.

- Offeror **has not** submitted a redacted Public Copy of its qualifications submission and understands that DFA will consider the entire qualifications submission the Public Copy and a public record and that it is subject to being released, in full, without any further notice. Offeror further understands that, should it wish for the entire qualifications submission to be kept from release as a public record, it can file a request for protective order in Hinds County Chancery Court within twenty-one (21) calendar days following the qualifications submission deadline and must provide notice of the filing to DFA. Otherwise, Offeror waives any rights it may have pursuant to the Mississippi Public Records Act, the Mississippi Uniform Trade Secrets Act, and any other claims it may have with regard to the public release of any information in the qualifications submission.

By signing below, Offeror understands failure to submit a redacted Public Copy may result in disclosure of the full contents of its qualifications submission, as it will be subject to review by the general public after the award of the contract.

Signature of Authorized Official
(No stamped signature)

Date

APPENDIX E – OFFEROR CERTIFICATION OF MINIMUM QUALIFICATIONS

<p>Minimum Qualifications are used by DFA to determine whether the Offeror meets the qualifications and has experience providing the services it is requesting. Any response that does not demonstrate that the Offeror meets these Minimum Qualifications will be considered non-responsive and may not be evaluated further. By signing below, authorized representative certifies that the information provided herein is accurate and correct.</p>	
<p>Experience:</p> <p>The Offeror states that it has prior experience providing BEAD Program Challenge Adjudication Services. Offeror has:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Five (5) years experience serving the telecommunications/broadband industry, with demonstrated experience in telecom/broadband infrastructure and service delivery <input type="checkbox"/> Performed BEAD Program Challenge Adjudication Services for another State Broadband Office within the last three (3) years. <input type="checkbox"/> Experience in data analysis and report writing, including analysis of FCC Fabric, NBAM and other relevant sources of data. <input type="checkbox"/> Proven ability to develop and implement standard operating procedures (SOPs). 	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Financial Stability or Solvency:</p> <p>Offeror confirms that it is financially stable/solvent. Offeror will provide independently audited financial statements (or sufficient information to enable the Agency to access the financial stability or solvency of the Offeror as described in the solicitation) upon request.</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Work for MS Internet Service Providers</p> <p>Vendor certifies that neither it nor its employees are actively working with or for and will not work with or for any internet service providers in Mississippi for the term of any awarded contract.</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>References:</p> <p>Offeror has provided contact information for at least one (1) reference from another State Broadband Office for which it has provided BEAD Program Challenge Adjudication Services. Respondent understands that it may be disqualified if the agency cannot complete reference scoring within 48 hours of initial contact with the reference. Respondent is encouraged to additional references.</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>

 Signature of Authorized Official
(No stamped signature)

 Date

**APPENDIX F – DEPARTMENT OF COMMERCE FINANCIAL
ASSISTANCE STANDARD TERMS AND CONDITIONS**

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/rtc.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.osec.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 (F67 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.

I. 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/execomp.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 (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.
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.

1. *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).