



## **2025 Strategic Planning Program: Notice of Funding Availability (NOFA) Appendix**

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### **Administrative Program Requirements**

All grantees will be subject to all applicable federal laws and regulations, including the OMB Uniform Guidance, and the terms and conditions of the award. The grant(s) awarded under this Notice of Funding Availability will be subject to the following administrative standards and provisions.

- I. Nonprofit Organizations, Educational institutions, For-profit entities, and State, Local, and Indian Tribal Governments—2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)
- II. All recipients must comply with the applicable provisions of the Workforce Innovation and Opportunity Act (WIOA), Public Law No 113-328, 128 Stat. 1425 (codified as amended at 29 U.S.C. 3101 et. seq.) and the applicable provisions of the regulations at 20 CFR Part 675 et. seq. Note that 20 CFR Part 683 (Administrative Provisions) allows unsuccessful applicants to file administrative appeals.
- III. All entities must comply with 29 CFR Part 93 (New Restrictions on Lobbying), 29 CFR Part 94 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)), 2 CFR Part 180 (OMB Guidance to Agencies on Government-wide Debarment and Suspension (Non-procurement)), and, where applicable, 2 CFR Part 200 (Audit Requirements).
- IV. Build America, Buy America Act Requirements

All grantees must comply with the Infrastructure Investment and Jobs Act (IIJA) and the Build America, Buy America Act (the Act), Pub. L. No. 117-58, §§ 70901-52, including the implementing requirements at 2 CFR Part 184 and M-24-02, as summarized here. None of the funds provided under this award may be used for an infrastructure project unless:

- i) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- ii) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States,

and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

- iii) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed in the definitions section below.

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

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

Recipients must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by an approved waiver or an exemption provided in 2 CFR 184.8, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the recipient. Recipients must keep these certifications with the award/project files and be able to produce them upon request from the DRA, auditors or Office of Inspector General.

Waivers – When necessary, recipients may submit a written waiver request to DRA to waive the Buy America Preference. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by DRA and the Office of Management and Budget Made in America Office.

Recipients should consult the DRA Buy America page [here](#) to determine whether there are any applicable waivers in place.

When DRA has determined that one of the following exceptions applies, a final determination of the waiver request will be made:

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

Before applying a Buy America preference to a covered program that will affect Tribal Communities, DRA will follow the consultation policies established through Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and consistent with policies set forth in the Presidential Memorandum of January 26, 2021, on Tribal Consultation and Strengthening Nation-Nation Relationships.

See the definitions section of Buy America terms.

DRA will follow the consultation policies established through Executive Order 13175, Consultation and Coordination and Coordination with Indian Tribal Governments, and consistent with policies set forth in the Presidential Memorandum of January 26, 2021, on Tribal Consultation and Strengthening Nation-Nation Relationships.

- I. Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance.
- II. Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the DRA pursuant to the Age Discrimination Act of 1975, as amended. The Act prohibits discrimination on the basis of age by recipients of Federal Financial Assistance and in federally assisted programs or activities but permits the use of certain age distinctions and factors other than age that meet the requirements of the Act and this part.
- III. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance pursuant to Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) ([20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688](#)), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal Financial Assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations.
- IV. Implementation of the Nondiscrimination and Equal Opportunity Provisions of the

Workforce Innovation and Opportunity Act.

- V. Labor Standards for the Registration of Apprenticeship Programs and Equal Employment Opportunity in Apprenticeship and Training, as applicable.
- VI. DRA will follow the procedures outlined in the agency's Freedom of Information Act (FOIA) policy. If DRA receives a FOIA request for your application, the procedures in DRA's FOIA policies for responding to requests for commercial/business information submitted to the government will be followed as well as all FOIA exemptions and procedures. See generally 5 U.S.C. § 552.
- VII. DRA programs are covered programs under the Biden Administration's Justice40 Initiative. As part of Justice40, DRA will identify the benefits of covered programs, determine how covered programs distribute benefits, and calculate and report on reaching the 40-percent goal of the Initiative. Benefits include direct and indirect investments (and program outcomes) that positively impact disadvantaged communities. Therefore, all entities must comply with reporting, data collection, and evaluation involved with the Justice40 Initiative.

## Other Legal Requirements

### I. Religious Activities

DRA notes that the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, applies to all federal law and its implementation. If an applicant organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled to receive federal financial assistance under this grant solicitation and maintain that hiring practice. Religious organizations are eligible, on the same basis as any other organization, to seek DRA support or participate in DRA programs for which they are otherwise eligible.

### II. Lobbying or Fundraising

Lobbying or Fundraising the U.S. Government with Federal Funds in accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Public Law 104-65) (2 U.S.C. § 1611), nonprofit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive federal funds and grants. No activity, including awareness-raising and advocacy activities, may include fundraising for, or lobbying of, U.S. federal, state, or local governments (see 2 CFR 200.450 for more information).

### III. Transparency Act Requirements

You must ensure that you have the necessary processes and systems in place to comply with the reporting requirements of the Federal Funding Accountability and

Transparency Act of 2006 (Pub. Law 109-282, as amended by the Government Funding Transparency Act of 2008, Pub. Law 110-252, Title VI, Chap. 2, Sec. 6202), as follows.

1. Except for those excepted from the Transparency Act under sub-paragraphs 1, 2, and 3 below, you must ensure that you have the necessary processes and systems in place to comply with the subaward and executive total compensation reporting requirements of the Transparency Act, should you receive funding.
2. Upon award, you will receive detailed information on the reporting requirements of the Transparency Act, as described in 2 CFR Part 170, Appendix A, which can be found at <https://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>.

The following types of awards are not subject to the Federal Funding Accountability and Transparency Act.

1. Federal awards to individuals who apply for or receive federal awards as natural persons (e.g., unrelated to any business or nonprofit organization he or she may own or operate in his or her name);
2. Federal awards to entities that had a gross income, from all sources, of less than \$300,000 to the entities' previous tax year; and
3. Federal Awards, if the required reporting would disclose classified information.

#### IV. Safeguarding Data Including Personally Identifiable Information (PII)

Applicants submitting applications in response to this NOFA must recognize that confidentiality of PII and other sensitive data is of paramount importance to the DRA and must be observed except where disclosure is allowed by the prior written approval of the Grant Officer or by court order. By submitting an application, you are assuring that all data exchanges conducted through or during the course of the performance of this grant will be conducted in a manner consistent with applicable federal law and TEGL 39-11 (issued June 28, 2012). All such activity conducted by the recipient(s) will be performed in a manner consistent with applicable state and federal laws.

By submitting a grant application, you agree to take all necessary steps to protect such confidentiality by complying with the following provisions that are applicable in governing the handling of confidential information: You must ensure that PII and sensitive data developed, obtained, or otherwise associated with DRA funded grants is securely transmitted.

1. To ensure that such PII is not transmitted to authorized users, all PII and other sensitive data transmitted via email or stored on CDs, DVDs, thumb drives, etc.,

must be encrypted using a Federal Information Processing Standards (FIPS) 140-2 compliant and National Institute of Standards and Technology (NIST) validated cryptographic module. You must not email unencrypted sensitive PII to any entity, including DRA or contractors.

2. You must take the necessary steps to ensure the privacy of all PII obtained from participants and/or other individuals and to protect such information from unauthorized disclosure. You must maintain such PII in accordance with the DRA standards for information security and any updates to such standards we provide to you. Grantees who wish to obtain more information on data security should contact their federal project officer.
3. You must ensure that any PII used during the performance of your grant has been obtained in conformity with applicable federal and state laws governing the confidentiality of information.
4. You further acknowledge that all PII data obtained through your DRA grant must be stored in an area that is physically safe from access by authorized persons at all times, and the data will be processed using recipient-issued equipment, managed information technology (IT) services, and designated locations approved by DRA. Accessing, processing, and storing of DRA grant PII data on personally owned equipment, at off-site locations (e.g., employee's home), and non-recipient managed IT services (e.g., Yahoo email) is strictly prohibited unless approved by DRA.
5. Your employees and other personnel who will have access to sensitive/confidential/proprietary/private data must be advised of the confidential nature of the information, the safeguards required to protect the information, and that there are civil and criminal sanctions for noncompliance with such safeguards that are contained in federal and state laws.
6. Before being granted access to PII, you must have the policies and procedures in place under which your employees and other personnel acknowledge their understanding of the confidential nature of the data, as well as the fact that they may be liable to civil and criminal sanctions for improper disclosure.
7. You must not extract information from data supplied by DRA for any purpose not stated in the grant agreement.
8. Access to any PII created by the DRA grant must be restricted to only those employees of the grant recipient who need it in their official capacity to perform duties in connection with the scope of work in the grant agreement.
9. All PII data must be processed in a manner that will protect the confidentiality of records/documents and is designed to prevent unauthorized persons from retrieving such records by computer, remote terminal, or any other means. Data

may be downloaded to, or maintained on, mobile or portable devices only if the data are encrypted using NIST-validated software products based on FIPS 140-2 encryption. In addition, wage data may be accessed only from secure locations.

10. PII data obtained by the recipient through a request from DRA must not be disclosed to anyone but the individual requestor, except as permitted by the grant officer or by court order.
11. You must permit DRA to make onsite inspections during regular business hours for the purpose of conducting audits and/or conducting other investigations to ensure that you are complying with the confidentiality requirements described above. In accordance with this responsibility, you must make records applicable to this agreement available to authorized persons for the purpose of inspection, review, and/or audit.
12. You must retain data received from DRA only for the period of time required to use it for assessment and other purposes or to satisfy applicable federal records retention requirements, if any. Thereafter, you agree that all data will be destroyed, including the degaussing of magnetic tape files and deletion of electronic data.

#### V. Record Retention

You must follow federal guidelines on record retention, which require that you maintain all records pertaining to grant activities for a period of at least three years from the date of submission of the final expenditure report. See 2 CFR 200.333-.337 for more specific information, including information about the start of the record retention period for awards that are renewed quarterly and annually and when the records must be retained for more than three years.

#### VI. Use of Contracts and Subawards

You must abide by the following definitions of contract, contractor, subaward, and subrecipient.

**Contract:** Contract means a legal instrument by which a non-federal entity (defined as a state or local government, Indian Tribe, institution of higher education, nonprofit organization, for-profit entity, foreign public entity, or a foreign organization that carries out a federal award as a recipient or subrecipient) purchases property or services needed to carry out the project or program under a federal award. The term as used in this NOFA does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward (see definition of subaward below).

**Contractor:** Contractor means an entity that receives a contract as defined above in

“Contract.”

Subaward: Subaward means an award provided by a pass-through entity (defined as a non-federal entity that provides a subaward to a recipient to carry out part of a federal program) to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward must be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient: Subrecipient means a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. You must follow the provisions of 2 CFR 200.330-.332 regarding subrecipient monitoring and management. Also, see 2 CFR 200.308(c)(6) regarding prior approval requirements for subawards. When awarding subawards, you are required to comply with provisions on government-wide suspension and debarment found at 2 CFR Part 180 and codified at 2 CFR Part 2998.

## VII. Closeout of Grant Award

Any entity that receives an award under this Announcement must close its grant with DRA at the end of the final year of the grant.

## Other Administrative Standards and Provisions

Except as specifically provided in this NOFA, our acceptance of an application and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Uniform Guidance requires that an entity’s procurement procedures ensure that all procurement transactions are conducted, as much as practical, to provide full and open competition. If an application identifies a specific entity to provide goods or services, the award does not provide the justification or basis to sole source the procurement (i.e., avoid competition).

## Special Program Requirements

### I. DRA Evaluation

As a condition of grant award, grantees are required to participate in an evaluation if undertaken by DRA. The evaluation may include an implementation assessment across grantees, as well as impact and/or outcomes analysis or assessment of return on investment. We may require applicants to collect data elements to aid the evaluation. As part of the evaluation, as a condition of award, grantees must agree to:

1. Make records available to the evaluation contractor or participants,



- employers, and funding;
2. Provide access to program operating personnel, participants, operational and financial records, and any other relevant documents to calculate program costs and benefits;
  3. Follow evaluation procedures as specified by the evaluation contractor under the direction of DRA.

## II. Performance Goals

Please note that applicants will be held to the program priorities provided, and failure to meet these outcomes may result in technical assistance or other interventions by DRA and may also have a significant impact on the decisions about future grants with DRA.

## Definitions

**Construction Materials:** Construction materials include an article, materials, or supply – other than an item of primarily iron or steel; a manufactured product; cement or cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that is or consists primarily of:

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

**Domestic content procurement preference** means all iron and steel used in the projects are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

**Infrastructure:** Infrastructure includes, a minimum, the structure, facilities, and equipment for in the United States: (1) roads, highways, and bridges, (2) public transportation, (3) dams, ports, harbors, and other maritime systems, (4) intercity passenger and freight railroads, (5) freight and intermodal facilities, (6) airports, (7) water systems, including drinking water and wastewater systems, (8) electrical transmission facilities and systems, (9) utilities, (10), broadband infrastructure, (11) buildings and real property.

Infrastructure includes facilities that generate, transport, and distribute energy.

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