

# Special Award Conditions

**Award Number:** NT10BIX5570089

**Amendment Number:** 0

## 1) ARRA Special Award Condition for Reporting Requirements

Reporting Requirements:

Pursuant to ARRA Special award conditions which are incorporated into this award. The recipient will report on the progress of their approved projects as reflected in the description of work which is incorporated by reference. Information from the progress reports will be available to the public.

The Recipient shall report the information described in section 1512(c) of the ARRA special award Condition using the reporting instructions and data elements that are provided online at [www.FederalReporting.gov](http://www.FederalReporting.gov) and ensure that any information that is pre-filled is corrected or updated as needed. Note: This is the primary reporting requirement under ARRA. Additional progress reports are needed for the program office which is identified in a separate special award condition.

The ARRA report is due no later than 10 days following the end of each calendar reporting period. For example, for the period ending September 30, due October 10th, period ending December 31, due January 10th, period ending March 31, due April 10th, period ending June 30, due July 10, following this pattern until the expiration date of the award is reached.

Failure to provide acceptable reporting by the due date may result in the suspension or termination of your award.

## 2) BTOP-Wide SACs

A. Guidelines for Matching Funds:

Recipient will provide, from non-Federal sources, not less than 20 percent of the total project cost. Matching funds can be in the form of either cash or in-kind contributions consistent with the 15 CFR 14.23, 24.3 and 24.24 as applicable. The recipient may be asked to provide supporting documentation upon request from the Grants Officer or NTIA.

B. Incorporation of Requirements from the Notice of Funding Availability (NOFA):

The recipient shall comply with the requirements found in the Department of Commerce, National Telecommunications and Information Administration Broadband Technology Opportunities Program, 75 FR 3792, January 22, 2010 ([http://www.ntia.doc.gov/frnotices/2010/FR\\_BTOPNOFA\\_100115.pdf](http://www.ntia.doc.gov/frnotices/2010/FR_BTOPNOFA_100115.pdf))

C. Notice of Limited Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA)

In accordance with Section 1605 of the Recovery Act, the Secretary of Commerce has granted a limited waiver of the Recovery Act's Buy American requirements with respect to certain broadband equipment that will be used in projects funded under the BTOP. A description of this equipment is included in the notice of waiver published in the Federal Register at 74 FR31410 (July 1, 2009).

D. Whistleblower Protection Act Requirement:

The Recipient shall comply with the Whistleblower Protection requirements of the American Recovery and Reinvestment Act (Recovery Act), Section 553 of Division A, Title XV, Public Law 111-5 which provides protection for employees of non-federal employers including employees of state and local governments, contractors, subcontractors, recipients, and any other non-federal employers receiving Recovery Act fund recipients, making specified disclosures relating to possible fraud, waste, or abuse of Recovery Act funds. The act requires any non-federal employer receiving Recovery Act funds to post a notice of the rights and remedies provided under the Act. The Recipient shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) and shall include this notice requirement in all contracts with subrecipients, contractors, and subcontractors

Recipients are reminded that the Office of Inspector General will verify the appropriate place of this poster as part of any field work conducted. Failure to display the poster may result in an audit finding. The poster can be downloaded from the following web site: <http://www.oig.doc.gov/recovery/whistleblower.html>

#### E. Interest-Bearing Accounts

This award is subject to 15 CFR 14.22 requiring recipients of Federal financial assistance that receive more than \$120,000 in Federal awards per year to maintain advances of Federal funds in interest bearing accounts. Interest earned on Federal advances deposited in such accounts (with the exception of \$250 per year, which may be retained for administrative expenses) shall be remitted promptly.

The complete address for remitting checks for interest earned on Federal advances is Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Recipients that do not have electronic remittance capability should send a check to this address. In keeping with Electronic Funds Transfer rules (31 USC part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIR Deposit System. Electronic remittances should be in the format and should include any data that are specified by the HHS as being necessary to facilitate direct deposit in HHS' account at the Department of Treasury.

#### F. Nondiscrimination and Interconnection

The recipient shall comply with the nondiscrimination and network interconnection obligations set forth in section V.D.3.b of the NOFA and in Section 6001(j) of the Recovery Act. Recipients may be asked to provide supporting documentation upon request from the Grants Officer. Failure to comply with this provision of the award may be considered grounds for any or all of the following actions: establishment of an account receivable for affected BTOP award, withholding payments under any and all BTOP awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any BTOP active awards, and termination of any BTOP active awards.

#### G. Davis-Bacon Act

The Recipient shall obtain and maintain in its official records documentation of weekly certified payroll reports and the Statement of Compliance from itself and all subrecipients, contractors, and subcontractor(s) in accordance with Section 1606 of the American Recovery and Reinvestment Act of 2009 and the Davis-Bacon Act and related acts.

The Recipient is not required to submit this documentation to the Grants Office except in response to a request for this information from its Grants Officer. The authorized representatives and agents of the Grants Office shall be permitted to

inspect all work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records.

Ten days prior to bid opening, any party soliciting a subrecipient, contractor, or subcontractor for work under this Award to which Davis-Bacon wage determinations apply must verify whether there have been any updates to the applicable Davis-Bacon wage determinations by reviewing the Department of Labor Wage Determinations OnLine website, free of charge, at [www.wdol.gov](http://www.wdol.gov). If there have been updates to the wage determinations, then these updated wage rates must be issued in a bid addendum. The Davis Bacon wage rates that are current ten days prior to the bid opening are the wage rates that will govern work performed under such solicitation.

**3) Automated Standard Application for Payments system (ASAP)**

Notwithstanding Section A.02 of the DoC Financial Assistance Standard Terms and Conditions, dated March 2008:

- a. The advanced method of payment shall be authorized unless otherwise specified in a special award condition.
  
- b. Payments will be made through electronic funds transfers, using the Department of Treasury's Automated Standard Application for Payment (ASAP) system and in accordance with the requirements of the Debt Collection Improvement Act of 1996. The following information is required when making withdrawals for this award: (1) ASAP account identification (id) = award number found on the cover sheet of this award; (2) Agency Location Code (ALC) = 13060001; and (3) Region Code = 02. Recipients do not need to submit a "Request for Advance or Reimbursement" (SF-270) for payments relating to this award. All non-ASAP Recipient Organizations must enroll electronically. The ASAP system no longer accepts paper forms for enrollment. If you are not currently enrolled in the ASAP system you must provide the Federal Awarding Agency with a Point of Contact name, e-mail address, mailing address, telephone number, EIN and DUNS numbers of your organization in order for the Federal Awarding Agency Enrollment Initiator (EI) to begin the on-line enrollment. If you have questions on this requirement please contact the Grant Specialist responsible for this award. If you have questions on the electronic process step-by-step instructions you may contact your responsible Regional Finance Center.

Advances taken through the ASAP shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned, via an ASAP credit, to the account from which the advanced funding was withdrawn. Advances shall be for periods not to exceed 30 days.

- c. This award has the following control or withdrawal limits set in ASAP:

None  
 Agency Review required for all withdrawals (see explanation below)  
 Agency review required for all withdrawal requests over  
\$ \_\_\_\_\_ (see explanation below)  
Maximum Draw Amount controls (see explanation below)  
\$ \_\_\_\_\_ each month  
\$ \_\_\_\_\_ each quarter

\$ \_\_\_\_\_ each year

d. Funds that have been withdrawn through ASAP may be returned to ASAP via the Automated Clearing House (ACH) or via FEDWIRE. The ACH or FEDWIRE transaction may only be performed by the Recipient's financial institution. Full or partial payments received by a Payment Requestor/Recipient Organization may be returned to ASAP. All funds returned to the ASAP system will be credited to the ASAP Suspense Account. The Suspense Account allows the Regional Financial Center to monitor returned funds and ensure that they are credited to the correct ASAP account. Returned funds that cannot be identified and classified to an ASAP account will not be accepted and will be returned to the originating depository financial institution (ODFI).

It is essential that the Payment Requestor/Recipient Organization provide its financial institution with ASAP account information (ALC, Recipient ID and Account ID) to which the returned funds are to be credited. Additional detailed information can be found at: <http://www.fms.treas.gov/asap/pay-return2.pdf>

There is a 10-day deadline for the head of the organization to initiate recipient enrollment upon receipt of ASAP registration notification. Failure to comply could subject the award to a change in the method of payment to reimbursement only.

#### **4) Post-Award Reporting Requirements**

The recipient shall submit a "Financial Status Report" (SF-425) on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31 or any portion thereof. Reports are due no later than 30 days following the end of each reporting period. A final SF-425 shall be submitted within 90 days after the expiration date of the award.

The recipient shall submit program-specific quarterly performance reports electronically to the Federal Program Officer in the same frequency as the Financial Status Report (SF- 425) unless otherwise authorized by the Grants Officer. The Federal Program Officer will provide updated instructions for accurate report completion at least 30 days prior to reporting period end date.

#### **5) Infrastructure-Wide SACs**

##### **A. Sale or Lease of Property Purchased with Award Funds:**

Recipients may not sell or lease any portion of the award-funded broadband facilities or equipment during their useful life, except as otherwise approved by NTIA. NTIA will consider a petition for waiver of the restriction if: (1) the transaction is for adequate consideration; (2) the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease; and (3) the transaction would be in the best interests of those served by the project. The petition for waiver may be submitted at any time during the useful life of the award-funded facilities and equipment, and it must include supporting documentation and justification regarding why the petition should be granted. This requirement is not meant to limit CCI awardees from leasing facilities to another service provider for the provision of broadband services, nor is this section meant to restrict a transfer of control of the awardee (NOFA, Section IX.C.2).

##### **B. Security Interest in Real Property including Broadband Facilities and Equipment**

The recipient shall execute a security interest or other statement of NTIA's interest in real property including broadband

facilities and equipment acquired or improved with Federal funds acceptable to NTIA, which must be perfected and placed on record in accordance with local law. This security interest will provide that, for the estimated useful life of the real property, facilities, or equipment, the recipient will not sell, transfer, convey, or mortgage any interest in the real property including broadband equipment acquired or improved in whole or in part with Federal funds made available under the award, nor shall the recipient use the real property including broadband facilities and equipment and for purposes other than the purposes for which the award was made, without the prior written approval of the Grants Officer. Such approval may be withheld until such time as the recipient first pays to NTIA the Federal share of the real property including broadband facilities and equipment as provided in 15 CFR 14.32 (15 CFR 24.31 for state, local, or other government entities). This security interest shall be executed in advance of any sale or lease and not later than closeout of the grant.

### C. Construction-Related Requirements

- **Maintenance.** The recipient agrees that, for the estimated useful life of the facility funded with this award, the project will be properly and efficiently administered, operated, and maintained for the purpose authorized by this award and in accordance with the terms, conditions, requirements, and provisions of the award. If NTIA determines at any time during the estimated useful life of the project, that the project and any project property is not being properly and efficiently administered, operated, and maintained, NTIA shall have the right to terminate this award for cause and pursue any other remedies allowed by law.
  
- **Compliance.** The recipient shall comply, and must require each contractor or subcontractor to comply, with all applicable Federal, state, and local laws and regulations.
  
- **Energy Efficiency.** The recipient shall apply, where feasible, sustainable, and energy efficient, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction.
  
- **Signs.** The recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign(s) satisfactory to NTIA that identifies the project and indicates that the project is Federally funded. NTIA also may require that the recipient maintain a permanent plaque or sign at the project site with the same or similar information.
  
- **Land, Easements, and Rights of Way.** The recipient must disclose all encumbrances to the operating unit. The operating unit will not accept any encumbrance that interferes with the construction, intended use, operation, or maintenance of the project during its estimated useful life. Unless otherwise provided for in the award, prior to grant of the award and commencement of construction, or when requested by the operating unit, the recipient must furnish evidence, satisfactory in form and substance to the operating unit, that title to real property is vested in the recipient, and that it has obtained any rights-of-way, easements, State and local government permits, long-term leases, or other property interests.
  
- **Relocation Assistance.** The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Pub. L. No. 91-646; 42 U.S.C. - 4601 et seq.), are applicable to each recipient of assistance from an operating unit. This Act provides assistance to persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with Federal assistance funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land

acquisition.

- Tribal Employment Rights Ordinances. In accordance with Departmental policy, all operating units must recognize Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under Federal awards and should be incorporated by the operating unit under its grants and contracts with American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an award, as provided under the applicable cost principles set out in 2 CFR 225.

#### **6) Accounting System Verification**

The recipient shall submit a signed statement from an authorized official, verifying the ability of the recipient's financial management system to appropriately track and account for federal grant funds and expenditures associated with the funded project. This statement must be received within 30 days of the award start date and the recipient is not allowed to draw down any funds until this statement is received and accepted by the Grants Officer.

#### **7) FCC Compliance and Notification (as Designee) SAC**

A. By accepting this award, the recipient is the designee of the City and County of San Francisco, City of Oakland, and the City of San Jose, California (local government partners) regarding the use of the 700 MHz public safety broadband spectrum (763-768 MHz and 793-798 MHz). As such, the recipient and local government partners, to the extent applicable, shall comply with the requirements established in the Federal Communications Commission's (FCC) Order in PS Docket 06-229, adopted on May 11, 2010 (FCC 10-79), and all subsequent orders and public notices regarding the use of such spectrum. If any future regulatory requirement (from the FCC or other governmental entity) results in a material technical or financial change in the project, the recipient must submit a revised budget, associated documentation, and other material, as applicable, for review and approval by the Grants Office.

B. The recipient shall provide NTIA with copies of all reports, showings, and agreements that are required to be submitted to the FCC within 15 days of submission to the FCC. The recipient shall also provide NTIA with copies of all orders, decisions, and public notices adopted or released by the FCC regarding the recipients use of the 700 MHz public safety broadband spectrum with 15 days of receipt from the FCC.

C. The recipient shall coordinate the public safety component of this project, to the extent applicable, with the full-time Statewide Interoperability Coordinator and the Statewide Interoperability Governance Body established in the State of the project.

#### **8) Transfer of 700 MHz Assets**

The recipient is required to execute an agreement on the transfer of ownership of the 700 MHz public safety broadband network, including the components of the public access subsystem that are funded by the Broadband Technology Opportunities Program, to the City and County of San Francisco, City of Oakland, and the City of San Jose, California or

their authorized representative. The precise terms and conditions of the transfer shall be mutually agreed to by the parties. Recipient shall comply with all applicable regulations regarding the transfer of award-funded facilities and equipment. The execution of the agreement shall occur prior to the end date of the grant, and a copy of the executed agreement must be provided to NTIA and the Grants Office.

#### **9) New Award SAC**

This award number NT10BIX5570089, to Motorola, Inc., supports the work described in the Recipient's proposal entitled Recovery Act - The San Francisco Bay Area Wireless Enhanced Broadband Project dated 03/26/2010, and revisions dated 3-24-2010 for BTOP Certification, 3-26-2010 for Budget Narrative, 6-23-2010 for Detailed Budget, and 3-26-2010 for SF424CandD which are incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

#### **10) Matching Requirement**

Since this award requires the Recipient to provide \$21,890,086 in project-related costs from non-federal sources, the Recipient must maintain in its official accounting records an accounting of \$72,483,637.

#### **11) Baseline Project Plan**

Recipients shall submit baseline project plans and details regarding key outputs and outcomes from their projects within 45 days of the close of the first quarter. Federal Program Officers will provide guidance on the format and content of these baseline plans and details for this one-time data gathering activity.

**Due Date: 11/15/2010**

#### **12) National Historic Preservation Act SAC**

The grantee may not expend any Federal funds other than Management and Administration (M&A) funds and limited, preliminary procurement funds prior to the following:

- The completion of any required consultations, to include consultations with the State Historic Preservation Office (SHPO) and the appropriate federally recognized Native American tribes, under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) (NHPA);
- Demonstration of compliance with all other applicable federal, state, and local environmental laws and regulations.

Project implementation (site preparation, demolition, construction, ground disturbance, or any other project implementation activities) may not begin prior to the completion of the above activities. The completion of any required consultations under Section 106 of the NHPA must be completed no later than six months after the award date unless a formal request for extension is submitted and approved by the Grants Officer. The grantee must comply with all conditions placed on the project as the result of consultation processes.

The allowable use of M&A funds prior to beginning project implementation includes, but is not limited to, activities necessary for the completion of the following:

- Pre-construction project planning, including collecting environmentally-related information;
- Applications for environmental permits;
- Studies and any wetland delineations, biological assessments, archaeological surveys, or other required analyses, and;
- Required consultation activities.

The allowable use of funds for limited, preliminary procurements prior to beginning project implementation includes, but is not limited to, the initiation of activities necessary to meet the project completion requirements as specified in the award, including the following:

- Purchase or lease of equipment, or entering into binding contracts to do so;
- Purchase of applicable or conditional insurance;
- Funds used to secure land or building leases, including right-of-way easements.

The allowable use of preliminary procurement funds is limited; must not result in an irrevocable commitment of resources; and is only allowed after inclusion in and approval of a revised 6-month expenditure plan. The revised 6-month expenditure plan is due within 30 days of receipt of this Special Award Condition (SAC) and will be reviewed by the Environmental Program Officer, who will make recommendations to the Federal Program Officer and the Grants Officer (who has final approval authority) to ensure all proposed procurement funds are reasonable and necessary to ensure that the project completion deadline requirements are met. All contracts must contain early termination clauses with termination costs clearly specified. All equipment purchased or leased in advance of project implementation and before completion of applicable consultations must be stored in locations other than the proposed project site and where there will be no impact to the environment, human health, or cultural resources (in most cases, this means equipment must be stored in existing warehouses). Under no circumstances will grant funds be drawn down for clearing or excavating land, or demolition or construction of buildings or towers, before all environmental SACs are completed and cleared. This limited, preliminary allowable use of funds for purchases and leases is designed for recipient flexibility and to streamline preparation for project implementation simultaneously during consultations; the clause, and all applicable restrictions, is lifted once the applicable consultations, and Finding of No Significant Impact (FONSI; if applicable) are complete and approved.

While this Special Award Condition is in effect, the Recipient shall submit, in advance of any draw downs from Automated Standard Application for Payments (ASAP), a revised 6-month expenditure plan that presents the proposed M&A and limited, preliminary procurement activities and costs. The revised 6-month expenditure plan will be submitted electronically to the Environmental Program Officer, who will review it and provide recommendations to the Federal Program Officer and the Grants Officer for final approval to ensure that the proposed activities and expenditures are reasonable and necessary in the context of environmental compliance. The Environmental Program Officer and Federal Program Officer must review and recommend and the Grants Officer must approve the revised 6-month expenditure plan prior to fund drawdowns through ASAP.

Once the Consultation activities have been completed, NTIA will review all documentation and determine whether the Consultation activities sufficiently address historical and/or cultural resource impacts. Projects found to have significant

impacts to environmental or historic resources may face de-obligation of funding if impacts cannot be mitigated. The grantee is required to provide any information requested by NTIA to ensure both initial and ongoing compliance with environmental and historic preservation laws, regulations, and best practices. The grantee shall notify NTIA within twenty-four (24) hours upon receipt of any notices of foreclosure; notices for continuing consultation received from the SHPO, Tribal Historic Preservation Office (THPO), USFWS, or other consulting party; or notices of noncompliance received from consulting authorities or regulatory agencies.

For all ground disturbing activities that occur during project implementation in the vicinity of known archaeological sites or suspected or known burials, the grant recipient must ensure that an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitors ground disturbance, and if any potential archeological resources or buried human remains are discovered, then the grantee must immediately cease construction in that area and notify NTIA and the interested State Historic Preservation Offices, Tribal Historic Preservation Offices, and tribes. Such construction activities may then only continue with the written approval of NTIA.

#### NEPA Determination

The proposed activities are categorically excluded from the need for further environmental review under NEPA.

The activities associated with this project qualify under BTOP Categorical Exclusions:

- A.3: Personnel and Administrative Actions.
- A.5: Internal modifications or equipment additions (e.g. computer facilities, relocating interior walls) to structures or buildings.
- B.5: Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property.
- B.7: Changes or additions to microwave sites, substations, switching stations, telecommunications switching, or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare).

The activities associated with this project qualify under DOC Categorical Exclusions:

- A-7: Acquisition, installation, operation, and removal of communications systems, data processing equipment, and similar electronic equipment.
- A-10: Sighting, construction (or modification), and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible).
- A-11: Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel.

Any change to the approved project scope that has the potential for altering the nature or extent of environmental or

cultural resources impacts must be brought to the attention of NTIA and will be re-evaluated for compliance with applicable regulatory requirements.

**Due Date: 02/01/2011**

### **13) For-Profit Recipient Audit Requirement**

A for-profit organization receiving a BTOP award exceeding \$100,000 in Federal funding shall have a program-specific audit performed based on the Recipient's BTOP program year, beginning with the date of the issuance of the BTOP award. The auditor should follow generally accepted government auditing standards and the requirements for a program-specific audit as described in OMB Circular A-133 - 235 and any applicable compliance supplements and BTOP audit guidelines. A copy of the program-specific audit shall be submitted to the Grants officer and to the DOC OIG at the following address:

Office of Inspector General  
U.S. Department of Commerce  
Atlanta Regional Office of Audits  
401 West Peachtree Street, N.W., Suite 2742  
Atlanta, Georgia 30308

An audit is required at least once every two years using the following schedule for audit report submission:

- For awards less than 24 months, an audit is required within 90 days of the project expiration and close out period. This audit shall include any costs incurred during the close out period.

- For 2- or 3- year awards, an audit is required:

1. within 90 days after the end of award year 1, and
2. within 90 days following the project expiration date and close out period. This audit shall include any costs incurred during the close out period.

- For awards extended beyond 3 years, an audit is required:

3. within 90 days after the end of award year 1, and
4. within 90 days after the end of award year 3, and
5. within 90 days following the project expiration date and close out period. This audit shall include any costs incurred during the close out period.

**Due Date: 10/31/2011**