

# Special Award Conditions

**Award Number:** NT10BIX5570031

**Amendment Number:** 0

## 1) 2762 BTOP-wide Special Award Conditions

### 1. 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.

### 2. 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, 74 FR 33104 (July 9, 2009).

### 3. Nondiscrimination and Interconnection:

The recipient shall comply with the nondiscrimination and network interconnection obligations set forth in section V.C.2.c 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.

### 4. Under-Served and Unserved Service Areas:

For infrastructure projects, the recipient certifies that its proposed funded service areas satisfies the definition of "unserved" or "underserved" area as set forth in the NOFA. To the extent that a proposed funded service area is later deemed not to be under-served or unserved, the Grants Officer and NTIA reserve the right to modify the terms and conditions of this award, including available funding, as necessary to ensure compliance with the NOFA.

### 5. 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 Part 14. This security interest shall be executed in advance of any sale or lease and not later than closeout of the grant.

### 6. Payments and Advances:

Payments 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, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order 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 award number found on the cover sheet of the award; (2) Agency Location Code (ALC); and Region Code.

Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30-day period. Advanced funds not disbursed in a timely manner and any applicable interest must be promptly returned to DOC. If a recipient demonstrates an unwillingness or inability to establish procedures which will minimize the time lapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.

#### 7. 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.

Recipients shall submit baseline project plans and details regarding key outputs and outcomes from their projects with their first quarterly performance (technical) report. Federal Program Officers will provide guidance on the format and content of these baseline plans and details for this one-time data gathering activity.

#### 8. 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).

## **2) 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.

### **3) 2762 Project Specific SAC**

Proposed Project-Specific Special Award Conditions:

#### 1. 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 the 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, the 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 the NTIA that identifies the project and indicates that the project is Federally funded. The 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. section 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 Broadband Technology Opportunities Program (BTOP) 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 C.F.R. part 225.

#### **4) New Award SAC**

This award number NT10BIX5570031, to Executive Office State of West Virginia, supports the work described in the Recipient's proposal entitled Recovery Act - West Virginia Statewide Broadband Infrastructure Project-"Middle Mile" dated 08/20/2009, and revision dated 02/05/2010 for budget narrative which is incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

#### **5) Award Payments**

Your award payments will be made through electronic funds transfers using the U.S. Department of the Treasury's Automated Standard Application for Payments (ASAP) system. Grantees must enroll in ASAP system by emailing the following information to [ASAP.Inquiries\\_Enrollment@noaa.gov](mailto:ASAP.Inquiries_Enrollment@noaa.gov) :

1. EIN#
2. DUNS#
3. Name of Organization
4. Type of Organization (i.e. Non-profit, For Profit, State etc.)
5. Address
6. Point of Contact
7. Title
8. Point of Contact's Email Address
9. Phone Number

Please put the award number on the subject line of the email for reference.

Please refer to the NOAA website at: <http://www.ago.noaa.gov/grants/grantees.shtml> for additional information.

#### **6) 2762 Environmental SAC**

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

- The completion of an Environmental Assessment (EA) in order to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Review of the application indicates that proposed activities may impact historic and cultural resources, migratory birds, critical habitat, and wetlands. These potential impact areas should be fully evaluated in the EA;
- The completion of consultation with the State Historic Preservation Office (SHPO) and with the appropriate federally recognized Native American tribes with ancestral lands in the state of West Virginia, as required under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) (NHPA), and with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.);
- Consultation with the USFWS regarding the impact of towers on migratory birds, under the Migratory Bird Treaty Act of 1918;

- The acquisition of all required permits from the U.S. Army Corps of Engineers to address potential impacts to wetlands, and;
- The compliance with all other applicable federal, state, and local environmental and historic preservation laws.

Project implementation (procurements, demolition, construction, ground disturbance, etc.) may not begin prior to the completion of the above activities. 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 such as the EA, and any wetland delineations, Biological Assessments (BAs), archaeological surveys, or other required analyses, and;
- Required consultation activities.

While this Special Award Condition is in effect, the Recipient shall submit, in advance of any draw downs from the Automated Standard Application for Payments (ASAP), documentation that details all M&A expenditures to be covered with the requested disbursement of funds. This documentation will be submitted electronically to the Grant Office and reviewed and approved by the Program Officer prior to funds being approved for disbursement through ASAP.

Once the EA is completed, NTIA will review all documentation and determine whether the EA sufficiently addresses all resource areas and whether the project may qualify for a Finding of No Significant Impact (FONSI). 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.

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.

For all ground disturbing activities that occur during project implementation, the 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 are discovered, then the grantee will immediately cease construction in that area and notify NTIA and the appropriate SHPO or THPO.

**Due Date: 08/01/2010**

**7) Matching Requirement**

Since this award requires the Recipient to provide \$33,500,000 in project-related costs from non-federal sources, the Recipient must maintain its official accounting records an accounting of \$159,823,296.

**Satisfied Date: 08/13/2010**