



Request for Proposals
for
Level 2 Electric Vehicle Charging Stations

Date RFP Issued:	September 9, 2024
Deadline to Submit Questions:	September 23, 2024 5:00 p.m. EST
Responses to Questions:	September 30, 2024 5:00 p.m. EST
Proposal Due Date:	October 9, 2024 5:00 p.m. EST
Contact/Submit To:	Sandra McKinney Town of McCormick PO Box 306 117 W Augusta Street McCormick, SC 29835 Email: smckinney@wctel.net

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I. RFP Summary

The Town of McCormick (SC) is releasing this RFP to procure two (2) level 2 dual headed electric vehicle charging stations. This charging equipment will be placed in or adjacent to a newly renovated public parking lot adjacent to Town Hall and each will be designated for public and/or employee vehicle usage.

Town of McCormick Electric Vehicle Overview

The Town of McCormick intends to pursue the purchase, installation, and maintenance of electric vehicle charging stations for use of residents and visitors alike. An application was made to the South Carolina Energy Office's Energy Efficiency and Conservation Block Grant (EECBG) program to fund this activity. The application was awarded and The Town of McCormick is now seeking suitable vendors. The Town of McCormick currently does not have level 2 EVSE capabilities.

In this RFP the Town of McCormick is pursuing a contract for procurement, installation, and maintenance of electric vehicle charging stations with the immediate procurement of two (2) dual headed AC Level 2 EV chargers within 90 days of contract execution. These level 2 charging stations must have technology that can capture interval charging data and can bill for usage. Additional requirements and expectations are listed in sections IV and V.

Coverage & Participation

The intended coverage of this RFP, and any agreement resulting from this solicitation, shall be for the use of the Town of McCormick. Issuance of this proposal does not obligate the Town of McCormick to purchase any solution from any vendor. The Town of McCormick reserves the right to reject any or all proposals. All costs associated with the proposal preparation are the sole responsibility of the vendor. Following acceptance of a proposal, but prior to entering into contract negotiations, the Town of McCormick reserves the right to improve, diminish and/or modify any part of the proposal to satisfy changed requirements.

Original RFP Document

The Town of McCormick shall retain the RFP, and all related terms and conditions, exhibits and other attachments, in original form in an archival copy. Any modification of these, in the vendor's submission, is grounds for immediate disqualification. Any follow-up communications regarding the RFP will be included in the final contract.

II. Town of McCormick Overview

The following section is intended to present background information for vendors with respect to the Town of McCormick.

Town of McCormick Profile

McCormick County and its county seat, the town of McCormick, were named for inventor Cyrus Hall McCormick (1809-1884). The county was formed in 1916 from parts of Edgefield, Abbeville, and Greenwood counties. This area was settled in the mid-eighteenth century by Scotch-Irish, French Huguenot, and German farmers. Some of the early inhabitants were massacred by Cherokee Indians at Long Cane in 1760, and the British subsequently built Fort Charlotte to protect the region; this fort was one of the first seized by the Americans in the Revolutionary War.

About 1850 gold was discovered where the town of McCormick now stands. The Dorn Gold Mine, which later also produced manganese, was bought by Cyrus McCormick in 1869; he donated land for the town, which was named for him in 1882. This mine continued to operate until the 1930s.

The population was 2,232 in the 2020 Census.

Current Background of the Town of McCormick

The Town is currently working on Phase III of a streetscape project to improve the look of Main Street and Augusta Street, to include an enhanced Veteran's Park and Public Parking Area behind Town Hall

The purposes of installing charging stations in the Town of McCormick include:

- Capturing EV interval charging and use data
- Analyzing data to understand charging habits in a public setting
- Potential movement to fleet electrification
- Understanding of benefits and risks of installing charging infrastructure
- Resident and visitor satisfaction

The first step in this process is for the Town of McCormick to install two (2) dual headed level 2 EV charging stations. Please keep in mind that any charging station that is proposed will need to be accessible to the general public and to those who may have a disability. More about this will be covered in later sections.

III. Key Dates

The following is a tentative schedule that will apply to this RFP but may change in accordance with the

ITEM	DATE
Distribute Request for Proposal to potential vendors	September 9, 2024
Deadline to submit questions to the Town	Sept 23, 2024 5:00 p.m. EST
Answers to questions from all Implementation Contractors delivered (email or conference call)	Sept 30, 2024 5:00 p.m. EST
Proposal Deadline	October 9, 2024 5:00 p.m. EST

IV. Scope of Work and Expectations

The following section is intended to present information about the scope of work and the specifications of the EV charging stations and associated products.

Scope of Work

The purpose of this RFP is to procure two (2) dual headed AC Level 2 EV charging stations within 90 days of contract execution.

Additional specifications for the EV charging stations is laid out in the “Expectations” section and are mirrored in the “Requirements” section. Based on the final grading of responses, the Town of McCormick will select a vendor and

initiate contract negotiations. The vendors proposal must provide sufficient detail to permit easy identification of costs. The Town of McCormick reserves the right to accept all, none, or portions of the proposed solution.

Expectations

A successful bid will include two (2) dual headed EV charging stations that must meet the following:

- ADA Accessible Equipment
- AC Level Two
- Charging stations are new (not refurbished/remanufactured)
- Meets SAE J1772 standards
- EV charging station can capture interval charging data at an interval of no longer than 30 minutes
- Uses Open Charge Point Protocol (“OCPP”) or a similar communication protocol that is not proprietary
- The Town of McCormick will have sole ownership of data from the charging station with no periodic costs or subscriptions necessary
- Available to be delivered and installed within 90 days of contract execution
- Is pedestal mounted or can easily be pedestal mounted
- Must be rated by NEMA or an equivalent standard for outdoor use
- Must be certified by Underwriters Laboratory (UL) or an equivalent safety standard
- Open ADR capability or an equivalent Demand Response interface
- Includes all manufacturers’ accessories that come standard with the EVSE
- EV charging stations will only communicate and transfer data from the charging station at the sole discretion of the Town of McCormick
- EV charging stations have data communication capabilities (Wi-Fi, Cellular, etc.)
- EV charging stations have the capabilities of receiving over the air updates to ensure charging compatibility with current and future electric and plug-in hybrid vehicles.

Additional information that will be taken into consideration during grading of the EV charging station bids includes:

- Dimensions of charger
- Amperage of charger
- Ability to have dual headed charging pedestals
- Amperage of dual headed charging pedestals
- Cable length
- Ease of use of cable retraction or cable organization system
- Metering accuracy
- Warranty
- Operating conditions (operating temperature, operating humidity, etc.)
- Special branding options of chargers
- Tamper/vandalism proof
- Pictures of installed chargers
- Maintenance of EVSE
- Option for manual data retrieval
- Option for ruggedized salt corrosive EV charging station

V. Proposal Instructions

In preparing proposals, vendors are required to complete all areas of this RFP including:

- Transmittal Letter
- Executive Summary
- Description of the Vendors Qualifications
- Requirements and Specifications
- Cost Worksheets

Vendors must provide answers to questions in the format requested. For questions that ask for technical specs or require pictures, vendors may submit additional documentation and make note of that in the response for the requirement. Complete answers to each question must be provided in the cells to the right of the question. *Yes* or *No* responses should be annotated with further explanation whenever possible. Failure to respond as requested may affect the overall scoring of the RFP and, in extreme instances, could result in the disqualification of the RFP.

Vendors may provide additional information on the company or the EV charging stations that differentiate them from other competitors.

Four non-priced and one priced copy of the RFP responses shall be submitted in non-transparent, sealed envelopes/boxes. Proposals must be formatted in the same manner as the Proposal Responses section of this RFP; all tables should retain their numerical sequence and content integrity. Proposals which do not meet these format requirements risk disqualification.

Proposals, as described, must be received no later than 5:00 p.m. EST **October 9, 2024**. No modifications to the proposals will be accepted after this closing date except as requested by the Town of McCormick.

All proposals must be submitted to the following address:

Town of McCormick
Attention: Sandra McKinney
PO Box 306
117 W Augusta St
McCormick, SC 29835

All correspondence, communications, and questions relative to the proposal or preparation of proposals should be directed by e-mail to Sandra McKinney (smckinney@wctel.net). All questions concerning the RFP must be submitted by 5:00 p.m. EST September 23, 2024. Answers will be compiled and sent back to all bidders by 5:00 EST September 30, 2024. The vendor is responsible for verifying receipt of any electronic documentation.

Contact with any Town of McCormick personnel including, but not limited to, management or members of the Town Council, regarding this project, is prohibited and is grounds for rejection of your proposal without further explanation

Proposal Section 1: Transmittal Letter

The transmittal letter will indicate the intention of the vendor to adhere to the provisions described in the transmittal will:

- Identify the person, by name and title, authorized to obligate the organization contractually;
- Identify the contact person responsible for this response. Specify phone, fax, and email address;
- Explicitly indicate review and acceptance of the Terms and Conditions and identify exceptions or “deal breakers”;
- Acknowledge the proposal is considered firm for ninety (90) days after the due date for receipt of proposals or receipt of the last revised offer submitted;
- Acknowledge completion of the Pricing Worksheet;
- Acknowledge completion of the Requirements and Specifications Worksheet;
- Signed by the person authorized to contractually obligate the organization

Proposal Section 2: Executive Summary

The vendor will provide an Executive Summary that presents in brief, concise terms a summary level description of the contents of the Proposal. In addition, the vendor must clearly and specifically detail all exceptions to the Terms and Conditions imposed by this RFP.

Proposal Section 3: Vendor Qualifications

The vendor must have a demonstrated track record in providing the products requested in this RFP. The vendor's track record should reflect experience in work of a similar nature and magnitude to that being proposed. Relevant experience must be associated with sales completed not more than two (2) years prior to the date of this RFP. The vendor should highlight their experience with electric utilities in the United States or government agencies within South Carolina, if possible.

The vendor will provide a listing of its current clients that have purchased products for which the Town of McCormick. Please complete the client listing below. Add rows to the table as appropriate. **These references are a requirement for a complete RFP response. These contacts may be contacted as part of the evaluation process. Any information obtained will be considered confidential and used only in the context of evaluating the responses to this RFP.**

Relevant Client List (Utilities Preferred)

Reference 1	
Organization name	
Industry	
Contact name, title, phone number, and email address	
Reference 2	
Organization name	
Industry	
Contact name, title, phone number, and email address	

Proposal Section 4: Requirements and Specifications

In this section, the vendor will present its recommended EV charging stations. The Town of McCormick is looking to the vendor to recommend the EV charging stations that it feels would be best suited to meet the needs of this RFP. The Town of McCormick expects the vendor to have a proven track record, compliant with industry standards. Please address each of the following requirements and specifications for each charger proposed.

The vendor may choose to propose one (1) or multiple (>1) charger brands and models.

Please follow the following guidelines when responding to the requirements and specifications:

- If proposing more than 4 charger brands/models, please create a spreadsheet and format additional columns as needed to show the differences in the brands/models.
- If a charging station has multiple options for a single requirement or specification (e.g. for charging cable length there is an option for a 12, 15 or 18 ft cable), you may handle that in one of two ways.
 1. Put all options in one cell for the specific make and model (preferred when possible, see example below)

3.5	Denote the charging cable length	3 Options: 12 Feet 15 Feet 18 Feet
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2. Use a separate column for each option

In addition to any spreadsheet, please attach one (1) to three (3) pictures of installed EVSE for each make and model proposed. If not possible, please make note of that in the spreadsheet.

Proposal Section 5: Costs

This section should contain cost information. Pricing should be quoted on a per charging head basis. All pricing should be in dollars. If there are any additional costs in addition to the cost of the EV charging station please include that as well. If costs differ based on different specifications (e.g. Longer charging cable is more expensive or additional costs for a maintenance plan) please make note of this. It is acknowledged that the vendor may be required to make some assumptions about the Town of McCormick's environment or about specific requirements. Any assumptions made by the vendor in regard to this RFP should be documented in this section. The Town of McCormick's assumptions regarding costs are that any expenses incurred by the vendor prior to award are the vendor's responsibility

Any oversight or unintentional omission of a component, artifact, resource or other consideration by the Town of McCormick that was not specifically identified in this RFP but is critical to the success of this solution's implementation, must be disclosed by the vendor, addressed, and included in this RFP. Failure to fully disclose and include all requirements for the successful implementation of the solution described by this RFP may result in vendor disqualification.

Costs should be organized and detailed in such a way as to enable the Town of McCormick to effectively analyze each cost component. We understand that some vendors sell EV charging stations as a package that includes charging heads, pedestal costs, maintenance, etc. If that is the case, please make sure the package includes all of the required cost components. A summary of cost components to include are stated below:

1. Charging head cost
 - a. If proposing a dual head charging station, please include the price for two charging heads.
 - b. If proposing a single head charging station, please include the price for one charging head.
2. Pedestal Cost
 - a. If the pedestal cost is included in the cost of the charger, please make note of that.
3. Maintenance Costs
 - a. Please include length of maintenance contract, along with an average yearly cost.
4. Additional costs for upgraded specifications
 - a. Example - longer charging cable
5. Other Costs
 - a. Please specify any additional costs not otherwise included above.
6. Payment/Financial Terms

The Town of McCormick is depending upon the expertise of the vendor, and therefore, the vendor is responsible for providing a COMPLETE list, with pricing, of ALL additional costs required to deliver a functionally complete EV charging stations package to the Town of McCormick. Please include suggestions for purchase quantities that may provide the lowest all-in costs.

All responses to the requirements will be incorporated into the contract with the selected vendor.

VI: Basis of Award

The Town of McCormick has formed a project team that will evaluate and rank proposals. Evaluation and ranking will occur after an initial review for bid responsiveness. No information will be provided as to the status of proposals, while they are being considered. The evaluation criteria for costs will not be the sole determinant of the award. The evaluation criteria for this RFP are as follows:

- Requirements and Specifications
- Experience
- Reference Calls
- Evaluated Cost

The Town of McCormick will score responses in the following way:

- 60% of the score will be based on the requirements and specifications, experience, and reference calls
- 40% of the score will be based on the evaluated cost

The vendor ultimately selected for completion of the RFP will depend on cost, available funding and management approval. The evaluated cost includes all costs charged to the Town of McCormick in order to purchase and receive the charging infrastructure that meets the described requirements. Upon completion of the proposal evaluation process, the Town of McCormick will enter into negotiations with the winner of the bid.

1. For a proposal to be considered responsive, it must
 - Be received by the due date and time specified herein;
 - Be completed in the required format as indicated in the "Proposal Instructions" section of this document;
 - Be completed with the required original ink signature on the original priced copy;
 - Supply all reference information and documentation in full, including current telephone numbers, as outlined in the RFP.

2. A proposal will be considered non-responsive for failure to comply with any of the above. In addition, the vendor may cause the proposal to be considered non-responsive for any of the following reasons; if the vendor:
 - Lacks the resources and ability to fulfill the RFP requirements as outlined in this document;
 - Shows evidence of real and/or apparent conflict of interest;
 - Is experiencing financial problems, which could impact its performance and ability to provide additional EV charging stations as needed over the next two years.
3. The Town of McCormick may exclude from further consideration any proposal that is non-responsive. If no responsive offers, or only one responsive offer is received, the Town of McCormick may negotiate a noncompetitive contract or cancel the proposed procurement. If there are several responsive offers, the Town of McCormick reserves the right to negotiate with one or more vendors to align bids, resolve bidder exceptions to the RFP requirements, and will select the offer that best meets its requirements. The Town of McCormick is a local government with an obligation to the citizens of the Town and the State to exercise good judgment in use of its monies.
4. **The Town of McCormick reserves the right to purchase all, part, or none of the proposed solution.** The Town of McCormick expressly reserves the right to reject any or all proposals, to waive any informalities or irregularities in the proposals received, and to accept that proposal which in its judgment best serves its purpose.
5. In addition, the following financial requirements must be met by the vendor:
 - No service fees or additional costs will be invoiced to the Town of McCormick by the selected vendor during the term of this agreement (except as described in this RFP or mutually agreed upon in writing).
 - There will be no “minimum service” or “special service” charges or surcharges.

6. Conflict of Interest

The vendor shall advise the Town of McCormick in writing with his or her proposal or prior to the effective date of this Contract, of any relationship with third parties, which present a conflict of interest with the rendering of the services, or which could prevent the vendor from carrying out the terms of this Contract, or which could present a significant opportunity for the disclosure of confidential information. The vendor shall not have an ownership interest in, or receive benefit, profit, or payment from, any company, firm, or individual which has or is seeking to have, business dealing with the Town of McCormick.

Subpart D. Bipartisan Infrastructure Law (BIL)-specific requirements

Term 43. Reporting, Tracking and Segregation of Incurred Costs

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

Term 44. Davis-Bacon Requirements

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the “Davis-Bacon Act” (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair, through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Recipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:

(1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.

(2) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.

(3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.

(4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).

(5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.

(6) cooperating with any authorized representative of the Department of Labor

in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

(7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

The Department of Energy has contracted with, a third-party DBA electronic payroll compliance software application. The Recipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software.

Davis Bacon Act Electronic Certified Payroll Submission Waiver

A waiver must be granted before the award starts. The applicant does not have the right to appeal SCEP's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

Term 45. Buy American Requirement for Infrastructure Projects

A. Definitions

Components are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

Construction Materials are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and 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, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

Domestic Content Procurement Preference Requirement- means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

(A) all iron and steel used in the project are produced in the United States;

(B) the manufactured products used in the project are produced in the United States; or

(C) the construction materials used in the project are produced in the United States.

Also referred to as the Buy America Requirement.

Infrastructure includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy - including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

Manufactured Products are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Primarily of iron or steel means greater than 50% iron or steel, measured by cost.

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

Public- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be

considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement

None of the funds provided under this award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

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

3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement 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 are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

C. Certification of Compliance

The Recipient 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.

The Recipient 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 a waiver or exemption, 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. The Recipient must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

D. Waivers

When necessary, the Recipient may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. Unreasonable Cost- 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.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and,
- Anticipated impact to the project if no waiver is issued.

The Recipient should consider using the following principles as minimum requirements contained in their waiver request:

- Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).

- Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- Conditional: The Recipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.

DOE may request, and the Recipient must provide, additional information for consideration of this waiver. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed.

Waiver requests may take up to 90 calendar days to process.

Term 46. Affirmative Action and Pay Transparency Requirements

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

(1) Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.

(2) Recipients and Contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.

(3) Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide 2 should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.