

## **Federal Award Administration Information**

### **A. Federal Award Notices**

Successful applicants will receive an award package from an authorized NIST official.

### **B. Administrative and National Policy Requirements**

#### **1. Administrative Requirements**

CHIPS Direct Funding will be subject to administrative requirements set forth in the terms of the CHIPS Incentives Award. These may include, but not be limited to, terms to ensure the appropriate use of Federal funds, compliance with programmatic requirements and commitments made by the applicant in the application, and conditions to mitigate project or applicant specific risks identified in the review process; remedies for noncompliance, including, but not limited to, temporarily withholding or suspending payments, disallowing costs, suspension or termination of the award, the return of funds made available under the award, the initiation of suspension or debarment proceedings in accordance with law; and other terms to ensure the efficient and effective execution of the project.

#### **2. National Environmental Policy Act and other Federal Environmental Authorizations**

Applicants must assist the Department with compliance with NEPA (42 U.S.C. § 4321 et seq.), and other applicable Federal environmental laws and authorities such as the National Historic Preservation Act, Endangered Species Act, and related Executive Orders. The Department may request that an applicant prepare draft environmental analyses, which it will analyze to determine the potential environmental impacts and consultation needs of projects that may receive CHIPS Incentives Program funding. The Department expects applicants to design their projects so that they avoid, minimize, and mitigate the potential for significant effects on the human environment. The applicant will be responsible for obtaining and complying with applicable Federal, state, and local permits such as those required under the Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act. The Department expects that each applicant invited to enter due diligence will be ready to begin the environmental review process and may request the applicant demonstrate such readiness before the Department invites the applicant to proceed to this phase. The Department encourages applicants to begin preparing for the environmental review process as early as possible so that the applicant can demonstrate its readiness to commence the project. Applicants should therefore prepare for the environmental review, including gathering data and analysis, engaging experts or outside contractors, etc., as early as possible. While actions taken by the applicant to demonstrate readiness do not guarantee selection for the due diligence phase, such actions will facilitate an expeditious environmental review process if selected for due diligence.

#### **3. Davis-Bacon Requirements**

As stated in the NOFO, all laborers and mechanics employed by contractors or subcontractors on a construction project that receives financial assistance under the CHIPS Incentives Program shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title

40, commonly referred to as the “Davis-Bacon Act.” Recipients of funding under this NOFO may also be required to undergo Davis-Bacon Act compliance training and to maintain competency in Davis-Bacon Act compliance.<sup>1</sup>

#### **4. Target Dates Clawback**

The CHIPS Act requires the Department to determine target dates by which each project shall commence and complete.<sup>2</sup> If a project does not commence and complete by the target dates specified in an award, the Department shall progressively recover up to the full amount of an award provided to a covered entity.<sup>3</sup>

As part of the application process, applicants will be required to provide information about project timelines. The Department will determine the specific target dates for each award based on information provided in the application and negotiations that occur during the review and selection process.

The Department may waive elements of the clawback requirements if circumstances beyond the ability of the covered entity to foresee or control are responsible for the delay.

#### **5. Technology Clawback**

Under the CHIPS Act, the Department shall recover the full amount of an award provided to a covered entity if, during the applicable term with respect to the award, the covered entity knowingly engages in any joint research or technology licensing effort (i) with a foreign entity of concern; and (ii) that relates to a technology or product that raises national security concerns, as determined by the Department and communicated to the applicant before engaging in such joint research or technology licensing.<sup>4</sup> Additional information on the implementation of this provision will be provided to applicants prior to award.

#### **6. Foreign Country of Concern Expansion Clawback**

Under the CHIPS Act, a covered entity must enter into an agreement specifying that during the 10-year period beginning on the date of the award, it may not engage in any significant transaction involving the material expansion of semiconductor manufacturing capacity in any foreign country of concern, except under certain limited conditions.<sup>5</sup> Additional information on the implementation of this provision will be provided prior to award.

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<sup>1</sup> The U.S. 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>. 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>.

<sup>2</sup> 15 U.S.C. § 4652(a)(5)(A).

<sup>3</sup> 15 U.S.C. § 4652(a)(5)(B).

<sup>4</sup> 15 U.S.C. § 4652(a)(5)(C). *See also* Final Rule, Department of Commerce, “Preventing the Improper Use of CHIPS Act Funding,” 15 C.F.R. Part 231 (Sept. 25, 2023), <https://public-inspection.federalregister.gov/2023-20471.pdf>.

<sup>5</sup> *See* 15 U.S.C. § 4652(a)(6)(C). *See also* Final Rule, Department of Commerce, “Preventing the Improper Use of CHIPS Act Funding,” 15 C.F.R. Part 231 (Sept. 25, 2023), <https://public-inspection.federalregister.gov/2023-20471.pdf>.

## **7. Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment**

Recipients, as well as contractors and subrecipients, may not use funds received in a CHIPS Incentives Award for certain telecommunication and video surveillance services or equipment, as set forth in section 889(b) of the National Defense Authorization Act of 2019 (Pub. L. No. 115-232).

## **8. Fraud, Waste, and Abuse**

The U.S. Department of Commerce Office of Inspector General (OIG) seeks to improve the efficiency and effectiveness of the Department's programs, including deterring and detecting fraud, waste, abuse, and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department activities, including grants, cooperative agreements, loans, and contracts.

Disclosures. Recipients of financial assistance from the Department shall timely disclose, in writing, to the OIG and Department, whenever, in connection with the award, performance, or closeout of an award under this NOFO, the recipient suspects that a principal, employee, agent, or subrecipient has committed: (a) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (b) A violation of the Civil False Claims Act (31 U.S.C. §§ 3729-3733).

Reporting. The OIG maintains a hotline to receive allegations of fraud, waste, or abuse. To report such allegations, please visit <https://www.oig.doc.gov/Pages/Hotline.aspx>. Upon request, the OIG will take appropriate measures to protect the identity of any individual who reports misconduct, as authorized by the Inspector General Act of 1978, as amended. Reports to the OIG may also be made anonymously.

### **C. Funding Availability and Limitation of Liability**

Funding for the program listed in this NOFO is contingent upon the availability of appropriations. In no event will the Department be responsible for application preparation costs. Publication of this NOFO does not oblige the Department to award any specific project or to obligate any available funds. The NOFO also is not intended to and does not create any rights enforceable by any alleged third-party beneficiaries.

If an applicant receives a CHIPS Incentives Award, the Department is not under any obligation to provide any additional future funding in connection with that award or to make any future award(s). Amendment or renewal of an award to increase funding or to extend the period of performance is at the sole discretion of the Department.

### **D. Reporting**

The Department understands the importance of undertaking systematic data collection and other rigorous evaluative activities to assess the outcomes related to funds given under this NOFO. The Department is committed to this goal, and all applicants should expect this will be a requirement of all awards. The Department intends to collect a range of data from recipients, which include, but are not limited to information on: domestic production capacity; workforce pipeline expansion, particularly among underserved communities; environmental impacts, and

implementation and effectiveness of environmental mitigation; and increased economic opportunity in communities. These data will be instrumental in understanding the effects of individual funded projects and will enable the Department to assess the extent to which the strategic objectives have been achieved.

All award recipients will be expected to comply with any reporting requirements, as well as any program evaluation activities undertaken by the Department. More detail regarding reporting requirements will be included in the award package.

### **1. CHIPS Incentives Financial and Programmatic Reports**

The Department will track the performance of each CHIPS Incentives Award via financial and programmatic reports, in accordance with the award terms and conditions. Reports will generally be required no less than semi-annually and must be submitted in an electronic format to be specified at the time of award.

### **2. Integrity and Performance Matters**

If the total value of a covered entity's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10 million for any period of time during the period of performance of a CHIPS Incentives Award made under this NOFO, then the covered entity shall be subject to the requirements specified in [Appendix XII to 2 C.F.R. Part 200](#) for maintaining the currency of information reported to SAM that is made available in FAPIIS about certain civil, criminal, or administrative proceedings involving the recipient.