

CARBON UTILIZATION
NE/Mid-Atlantic Regional Workshop



NAVIGATING GRANT
REQUIREMENTS

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Program Background

- Section 40302 of the Bipartisan Infrastructure Law:
 - ~\$310,000,000 over five years (2022 through 2026)
 - for use by eligible entities
 - to procure and use commercial or industrial products that:
 - ✓ use or are derived from anthropogenic carbon oxides; and
 - ✓ Involve demonstrated, significant net reductions in lifecycle greenhouse gas emissions compared to incumbent technologies, processes, and products.



Governing Regulations and Guidance

10 CFR 600

- Department of Energy Financial Assistance Rules

OMB Circular A-102

- Grants and Cooperative Agreements with State and Local Governments

OMB Circular A-133

- Audits of States, Local Governments and Non-Profit Organizations

OMB Circular A-87

- Cost Principles for State, Local and Indian Tribal Governments



Key Regulatory Requirements

Eligibility

Standards for
Procurement by
Grantees

Procurement by
Grantees –
Required Contract
Provisions

Monitoring and
Reporting Program
Performance

Standards for
Financial
Management
Systems

Audit
Requirements

Records Retention
and Access

High-Risk
Recipients



Eligibility

Eligible Entities:

- ✓ States
- ✓ Local governments
- ✓ Public utility (which could be for-profit entity)

× Non-utility private sector parties are not eligible for Section 40302 grants. But private sector parties will be participating indirectly through supply contracts with grantees.



Standards for Procurement by Grantees

- States and local governments procuring goods and services for grant projects can generally proceed based on their standard procurement policies and procedures.
- But local governments must also comply with certain standards, including:
 - maintaining a written code of conduct;
 - efficiency and economy;
 - appropriate protest procedures; and
 - competitive procurement process, when necessary



Local governments are encouraged to enter into state and local intergovernmental agreements for procurement or use of common goods and services.



Procurement by Grantees – Required Provisions

Depending on the scope of the contract, a grantee's contracts for procurement of goods and services for grant projects must contain the following provisions (among others):

- ▲ Administrative, contractual, or legal remedies to address violation or breach of contract terms
- ▲ Termination for cause and for convenience by the grantee
- ▲ Compliance with various legal measures including EEO, Copeland “Anti-Kickback” Act and Davis-Bacon Act



Monitoring and Reporting Program Performance

- Grantees are responsible for managing the day-to-day operations of grant-supported activities. For-profit utilities may be required to submit periodic progress reports.

Grantees must monitor grant-supported activities to assure compliance with applicable federal requirements and performance goals



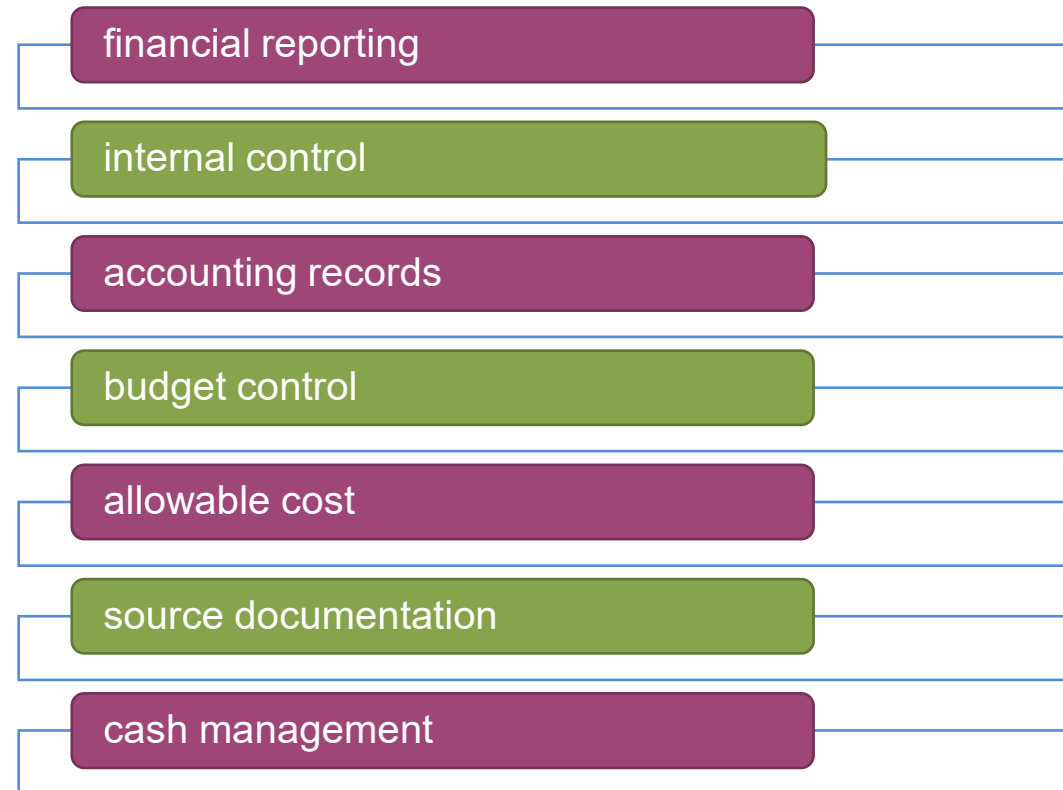
Standards for Financial Management Systems

- States

- Must account for disposition grant funds.
- Fiscal control and accounting procedures of the state must be sufficient to (i) permit the preparation of certain reports and (ii) permit compliance tracing of the funds.

Standards for Financial Management Systems

- Local governments
 - Financial management systems must demonstrate appropriate procedures and policies for:





Standards for Financial Management Systems

- For-profit utilities
 - Encouraged to use existing financial management systems to the extent that the systems comply with GAAP and the standards listed below which include, among others:
 - Effective control of all funds; and
 - Accurate, current and complete records documenting source and application of federal funds.



Audit Requirements

State and Local Governments

Single audit required for expending over \$500,000 in federal funds

An independent auditor is to perform the audit in accordance with the government auditing standards.

Auditor is to be retained by the cognizant state or the local government.

For-Profit Utilities

If recipient is already performing under a federal award that requires an audit, that auditor must perform the independent audit.

Audit generally should be part of regularly scheduled, annual audit of the recipient's financial statements.



Audit Requirements

- Audit findings are required to cover, among other items:
 - any deficiency in internal controls;
 - material noncompliance with the laws, regulations or agreement provisions;
 - detected fraud; and
 - misrepresentation of the status of a prior finding.



Records Retention and Access

- Where required, grant-related records must be retained for three years.
- DOE and the Comptroller General have the right of access to any pertinent records.



"High-Risk" Recipients

- "High-risk" grantee:
 - a history of unsatisfactory performance
 - financial instability
 - lack of a management system that does not meet certain standards
- As part of the grant, DOE may require additional financial reports, project monitoring or approvals.



Considerations for Private Entities

- Procurement by eligible entities is expected typically to be through commercial contracts with the item manufacturer.
- The private sector supplier should review any such proposed contract for, e.g., (i) federally mandated clauses and (ii) indemnification, warranty and liability-related clauses.



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