



FACT SHEET
Broadband Technology Opportunities Program
Flow-down of Award Terms to Contractors and Vendors

I. Overview

Recipients are responsible for ensuring that they incorporate or “flow down” certain terms and conditions of their BTOP awards to contracts that the recipient (or one of its subrecipients) negotiates with a contractor or vendors. These terms and conditions may also flow down to subcontractors. In general, the clauses incorporated in procurement contracts should contain the terms that a contractor must flow down to its subcontractors or vendors.

- NOTE: As shown in the chart below, this Fact Sheet addresses contracts with contractors and vendors. BTOP recipients must require subrecipients to comply with practically all terms and conditions of the award, including but not limited to the “flow down” requirements discussed here. For further information, see the BTOP Subrecipient Monitoring Fact Sheet, posted at <http://www2.ntia.doc.gov/ManagementResources>. NTIA also plans to release another Fact Sheet addressing requirements specific to customers leasing BTOP facilities under Indefeasible Right-of-Use (IRU) arrangements.

II. Provisions Required in Most Contracts with Contractors and Vendors

As shown in the charts below, there are many contract provisions that a recipient or subrecipient must include in its contracts with contractors or vendors of goods or services purchased with award funds. The list of required provisions depends upon whether the recipient or subrecipient is an entity subject to 15 C.F.R. Part 14 or Part 24 of the Department of Commerce (DOC) Uniform Administrative Requirements. Part 14 applies to non-profit and commercial organizations, hospitals, and institutions of higher education, while Part 24 applies to State, local government, and tribal entities.

These charts also include other sources of BTOP terms and conditions that may flow down to contractors or vendors, such as the American Recovery and Reinvestment Act of 2009 (“ARRA”), the DOC Financial Assistance Standard Terms and Conditions (“DOC Standard Terms and Conditions”), and the DOC American Recovery and Reinvestment Act Award Terms (“DOC ARRA Award Terms”). These documents may also refer to other statutes or regulations, which may provide specific language for a recipient to include an agreement with a contractor or vendor.





A. Non-Profit, Commercial Organizations, Hospitals, and Institutions of Higher Education

Recipients or subrecipients that are nonprofit or commercial organizations, institutions of higher education, or hospitals must include the following provisions in their contracts with contractors or vendors:

Contract Provision	Contracts to Which Requirement Applies	Source(s) of Requirement and/or Contract Language
All Contracts		
Equal Employment Opportunity	All contracts (see 41 C.F.R. § 60-1.5 for exemptions)	<ul style="list-style-type: none"> ■ 15 C.F.R Part 14, Appendix A ■ 41 C.F.R. § 60-1.4(b) ■ 41 C.F.R. § 60-4.3
Rights to Inventions	Contracts awarded to nonprofits and small business organizations for the performance of experimental, developmental, or research work	<ul style="list-style-type: none"> ■ 15 C.F.R. Part 14, Appendix A ■ 37 C.F.R. § 401.14 ■ DOC Standard Terms and Conditions § M.04
Debarment and Suspension	All contracts except procurement contracts for goods and services under \$25,000 that do not require the consent of a DOC official; contracts in excess of \$100,000 must provide certification	<ul style="list-style-type: none"> ■ DOC Standard Terms and Conditions § J.04(b) ■ 15 C.F.R. Part 14, Appendix A ■ 2 C.F.R. Part 1326 Subpart C ■ 2 C.F.R. § 180.330
Buy American	All contracts for construction, alteration, maintenance, or repair of a public building or public work	<ul style="list-style-type: none"> ■ ARRA § 1605 ■ DOC ARRA Award Terms § A.2
Access to Records	All contracts under ARRA	<ul style="list-style-type: none"> ■ ARRA § 1515 ■ DOC ARRA Award Terms § B.5 ■ 15 C.F.R. § 14.48(d)
Contracts in Excess of \$2,000		
Copeland "Anti-Kickback" Act	All construction or repair contracts in excess of \$2,000	<ul style="list-style-type: none"> ■ 15 C.F.R. Part 14, Appendix A ■ 29 C.F.R. §§ 3.11, 5.5(a)





Contract Provision	Contracts to Which Requirement Applies	Source(s) of Requirement and/or Contract Language
Davis-Bacon Act	All construction contracts and subcontracts for laborers and mechanics in excess of \$2,000	<ul style="list-style-type: none"> ■ ARRA § 1606 ■ DOC ARRA Award Terms § A.3 ■ 15 C.F.R. Part 14, Appendix A ■ 29 C.F.R. § 5.5(a)
Contracts in Excess of \$100,000		
Bid Guarantees From Bidders Equivalent to 5% of the Bid Price	All construction and facility improvement contracts in excess of \$100,000, unless DOC approves the recipient's own policy and requirements	<ul style="list-style-type: none"> ■ 15 C.F.R. § 14.48(c)
Performance Bonds and Payment Bonds for 100% of Contract Price		<ul style="list-style-type: none"> ■ 15 C.F.R. § 14.48(c)
Clean Air Act, Federal Water Pollution Control Act	Contracts and subgrants in excess of \$100,000	<ul style="list-style-type: none"> ■ 15 C.F.R. Part 14, Appendix A ■ DOC Standard Terms and Conditions § L
Lobbying Restrictions		<ul style="list-style-type: none"> ■ DOC Standard Terms and Conditions § J.04(c) ■ 15 C.F.R. Part 14, Appendix A ■ 15 C.F.R. § 28.110 and Part 28, Appendices A-B
Violation/Breach of Contract		<ul style="list-style-type: none"> ■ 15 C.F.R. § 14.48(a)
Termination		<ul style="list-style-type: none"> ■ 15 C.F.R. § 14.48(b)
Contract Work Hours and Safety Standards Act (Overtime and Construction Safety)		Construction contracts and other contracts that employ mechanics or laborers in excess of \$100,000





B. State, Local, and Tribal Governments

Recipients or subrecipients that are State, local, or tribal governments must include the following provisions in their contracts with contractors or vendors:

Contract Provision	Contracts to Which Requirement Applies	Source(s) of Requirement and/or Contract Language
All Contracts		
Rights to Inventions, Copyrights, and Data	All contracts	<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(8)-(9) ■ DOC Standard Terms and Conditions § M.04
Debarment and Suspension		<ul style="list-style-type: none"> ■ DOC Standard Terms and Conditions § J.04(b) ■ 2 C.F.R. Part 1326 Subpart C ■ 2 C.F.R. § 180.330 ■ 15 C.F.R. § 24.35
Access to Records		<ul style="list-style-type: none"> ■ ARRA § 1515 ■ DOC ARRA Award Terms § B.5 ■ 15 C.F.R. § 24.36(i)(10)
Awarding Agency Reporting Requirements		<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(7)
Records Retention Requirement		<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(11)
Energy Policy and Conservation Act		<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(13)
Copeland "Anti-Kickback" Act	All contracts and subgrants for construction or repair	<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(4) ■ 29 C.F.R. §§ 3.11, 5.5(a)





Contract Provision	Contracts to Which Requirement Applies	Source(s) of Requirement and/or Contract Language
Buy American	All contracts for construction, alteration, maintenance, or repair of a public building or public work	<ul style="list-style-type: none"> ■ ARRA § 1605 ■ DOC ARRA Award Terms § A.2
Contracts in Excess of \$2,000		
Contract Work Hours and Safety Standards Act (Overtime and Construction Safety)	Construction contracts in excess of \$2,000; contracts in excess of \$2,500 for other contracts that involve mechanics or laborers	<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(6) ■ 29 C.F.R. § 5.5(b)-(c)
Davis-Bacon Act	All construction contracts and subcontracts for laborers and mechanics in excess of \$2,000	<ul style="list-style-type: none"> ■ ARRA § 1606 ■ DOC ARRA Award Terms § A.3 ■ 15 C.F.R. § 24.36(i)(5) ■ 29 C.F.R. § 5.5(a)
Contracts in Excess of \$10,000		
Equal Employment Opportunity	Contracts in excess of \$10,000	<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(3) ■ 41 C.F.R. § 60-1.4(b) ■ 41 C.F.R. § 60-4.3
Termination	Construction contracts in excess of \$10,000	<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(2)
Contracts in Excess of \$100,000		
Clean Air Act, Clean Water Act	Contracts, subcontracts, and subgrants in excess of \$100,000	<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(12) ■ See also DOC Standard Terms and Conditions § L





Contract Provision	Contracts to Which Requirement Applies	Source(s) of Requirement and/or Contract Language
Lobbying Restrictions	Contracts, subcontracts, and subgrants in excess of \$100,000	<ul style="list-style-type: none"> ■ DOC Standard Terms and Conditions § J.04(c) ■ 15 C.F.R. § 28.110 and Appendices A-B to Part 28
Violation/Breach of Contract		<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(i)(1)
Performance Bonds and Payment Bonds for 100% of Contract Price	All construction or facility improvement contracts exceeding \$100,000, unless DOC approves the recipient's own policy and requirements	<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(h)
Bid Guarantees From Bidders Equivalent to 5% of the Bid Price		<ul style="list-style-type: none"> ■ 15 C.F.R. § 24.36(h)

III. Federal Interest Provisions in Agreements with Contractors and Vendors for Less Than Fee Simple Interest

In projects that involve construction, when using BTOP or matching funds to purchase an interest that is less than fee simple, a recipient or subrecipient must take one or both of the following actions:

- Include in the contract an acknowledgement of the Federal Interest in the property and provide a right of assignment if the property is not used in accordance with the terms and conditions of the BTOP award; and/or
- Record notice of the Federal Interest (e.g., a UCC-1 statement or a covenant in the land records, as appropriate).

In the case of land and fixtures, "less than fee simple" interests include, but are not limited to, capital leases, easements, and rights-of-way. In the case of personal property, such interests include, but are not limited to, long-term IRU agreements and other capital leases.

The Federal Interest is detailed in the BTOP Federal Interest Documentation Requirements Fact Sheet, posted at <http://www2.ntia.doc.gov/ManagementResources>. See also 15 C.F.R. §§ 14.30-37 and 24.31-34 (as applicable).

IV. Non-Discrimination and Interconnection Obligations in Agreements with Contractors Engaged to Deploy or Operate Facilities

Each BTOP Infrastructure award includes certain non-discrimination and interconnection requirements, which are described in the Notices of Funds Availability (NOFAs). See Notice of Funds Availability and Solicitation of Applications, 74 Fed. Reg. 33104 at 33110-11, 33132-34 (July 9, 2009) ("First NOFA"); Notice of Funds Availability and Solicitation of Applications, 75 Fed. Reg. 3792 at 3800-01 (Jan. 22, 2010) ("Second NOFA").

When a recipient engages another entity to deploy or operate a substantial proportion of the BTOP-funded network facilities, the recipient may need to require the other entity to comply with BTOPs nondiscrimination and





interconnection requirements to ensure that it provides the type of open and nondiscriminatory network that was the purpose of the award.

For more information on the nondiscrimination and interconnection obligations, please refer to the Nondiscrimination and Interconnection Obligations Fact Sheet, available at <http://www2.ntia.doc.gov/ManagementResources>.

V. Additional Resources

For additional information pertaining to the flow-down of contract provisions, please refer to the following resources:

- Department of Commerce Financial Assistance Standard Terms and Conditions, available at: <http://oam.ocs.doc.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf>
- U.S. Department of Commerce American Recovery and Reinvestment Act Award Terms, available at: http://www2.ntia.doc.gov/files/award_docs/ARRA-DOC-Award-Terms-Final-5-20-09PDF.doc.pdf
- BTOP Subrecipient Monitoring Fact Sheet, available at: http://www2.ntia.doc.gov/files/subrecipient_monitoring_fact_sheet_032111_final.pdf
- BTOP Federal Interest Documentation Requirements Fact Sheet, available at: http://www2.ntia.doc.gov/files/fact_sheet_federal_interest_082510_v2_1.pdf
- BTOP Nondiscrimination and Interconnection Obligations Fact Sheet, available at: http://www2.ntia.doc.gov/files/Interconnection_Nondiscrimination_11_10_10_FINAL.pdf
- Code of Federal Regulations, available at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

