



Nevada Solar for All

Request for Proposals (RFP): RFP-SFA-001

Third-Party Owned (TPO) Solar PV on Residential and Commercial Buildings

| Milestone | Date |
|---------------------------------------|---|
| RFP launch date | January 29, 2025 |
| Questions Due | February 4, 2025 by 11:59pm Pacific Time |
| Answers Posted | February 7, 2025 |
| <u>Proposals Due</u> | <u>February 19, 2025 by 11:59pm Pacific Time</u> |
| <u>Selection Notifications</u> | <u>February 25, 2025</u> |
| Memorandum of Understanding Execution | <u>February 28, 2025</u> |

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1. BACKGROUND

The Nevada Clean Energy Fund (“NCEF”) received a \$156 million grant from the U.S. Environmental Protection Agency (“EPA”)’s Solar for All program to establish financial and technical assistance programs under its Nevada Solar for All (“NSFA”) initiative. NSFA will enable low-income and disadvantaged communities in Nevada to implement and benefit from solar energy. NSFA will administer statewide financial assistance programs for single-family homeowners, affordable housing properties, and residential-serving community solar that enable equitable access to solar in Nevada. NSFA will conduct targeted outreach, education, technical assistance, and workforce development in rural, urban, suburban, Tribal, and persistent poverty communities. NSFA will catalyze market transformation and impact for low-income solar in Nevada over the long-term by spurring regulatory change, building a sustainable and diverse solar workforce, and leveraging private capital.

NCEF is a nonprofit organization dedicated to supporting a thriving, affordable, and accessible clean energy economy by providing financial and technical resources to Nevadans. NCEF’s programs are designed to accelerate clean energy growth in the state, reduce energy costs, create jobs, and meaningfully address climate change. NCEF works with communities, affordable housing, local businesses, schools, governments, Tribes, utilities, contractors, and others to increase access to clean energy opportunities, from rooftop solar and energy storage to energy efficiency and electric vehicles. NCEF was established by Nevada statute in 2017 to serve as the state’s nonprofit green bank.

2. RFP DESCRIPTION

NCEF seeks proposals from qualified vendors to act as solar third-party ownership (“TPO”) providers to support, expand, and streamline efforts to deploy solar photovoltaics (“PV”) systems in Nevada under Nevada Solar for All Program. In some cases, enabling upgrades and energy storage may also be eligible for NSFA financial assistance (together with solar PV, the “Eligible Technologies”). The TPO option should reduce the burdens of tax credit monetization, operations, and maintenance of the installed Eligible Technologies for participating homeowners, multifamily affordable housing properties, and/or community solar site hosts (“Customers”). Up to \$133 million in federal financial assistance, including approximately \$9 million for single-family solar installations and \$124 million for commercial (multifamily and residential-serving community solar) installations, may be deployed through TPO structures through the end of the NSFA period of performance ending May 2029. Actual amounts deployed will depend on each program participant’s preference for TPO versus direct ownership.

To be considered, proposals must be submitted by the deadline of 11:59pm Pacific Time on February 19, 2025. This is a strict deadline. No proposals will be accepted after this deadline.

3. PURPOSE

NCEF seeks to identify vendor(s) qualified to provide leases and/or power purchase agreements (PPAs) to eligible Customers for Eligible Technologies. Customers interested in TPO structures under NSFA may only work with NCEF-selected and approved TPO providers. This RFP seeks to establish a list of approved TPO providers. Selected TPO providers will enter into a financial assistance agreement in the form of a federal procurement contract with NCEF. Subsequently, TPO providers will enter into mutually beneficial leases or PPA structures with Customers. NCEF is specifically interested in TPO providers offering solutions that ensure the long-term financial and operational viability of the solar projects and that comply with the requirements of EPA’s Solar for All program.

4. SCOPE OF WORK

Selected TPO providers under NSFA will be responsible for providing lease and/or PPA options to NSFA-eligible single-family homes and/or commercial buildings for technologies eligible for NSFA financial assistance. Selected TPO providers will provide production guarantees and be responsible for ensuring the installation, operation, maintenance, and warranty servicing of the technologies.

NCEF expects its financial assistance to TPO providers will be in the form of a loan and have a duration of five to ten years. The term of the TPO lease or PPA agreements with the Customers should extend for the expected life of the solar installation (15 to 20 years) with a buyout option after five years. NCEF expects that NSFA financial assistance will cover the entire cost of the Eligible Technology installation, net of any tax equity investment, as appropriate. Selected TPO providers may assess fees on the Eligible Technology installation and/or lease or PPA servicing, as determined by this RFP.

The TPO provider may also be the Engineering, Procurement and Construction (EPC) entity for the Eligible Technologies or may enter into a three-way contractual agreement with an NCEF-vetted and approved contractor for the EPC portion of the project. Proposals should indicate whether the TPO provider will also perform the EPC or will subcontract with one or more NCEF vetted contractor/s for EPC of the Eligible Technologies.

The Scope of Work includes the following:

1. **Underwriting:** Underwrite the prospective customer to ensure customer meets minimum requirements agreed upon with NCEF.
2. **Lease or PPA:** Execute a lease or PPA with the NSFA Customer, with oversight from NCEF.
3. **EPC:** Implement EPC activities directly or subcontract with an NCEF-vetted and approved EPC entity to install Eligible Technologies in Nevada.
4. **O&M:** Operation, maintenance, production guarantee, and warranty servicing of the installed photovoltaic system.
5. **Customer Service:** Communication and customer support provided to the NSFA Customer.
6. **Tax Benefit Monetization:** Monetization of the Section 48 Investment Tax Credit (ITC), including tax credit adders.
7. **Lease/PPA Fiscal Management:** Manage ongoing accounting, tax, legal, and other financial aspects of the leases and/or PPAs.
8. **Regulatory Compliance:** Comply with all applicable federal regulations including, but not limited to, Build America, Buy America (BABA) and Davis-Bacon and Related Acts. (DBRA) as applicable on NSFA sites. See Section 5 for more details.
9. **Production Guarantee & Monitoring:** Share PV energy production data with NCEF on at least an annual basis to facilitate NCEF's aggregation and monetization of Renewable Energy Certificates (RECs).
10. **Loan Repayment:** Make timely loan repayments to NCEF.
11. **Minimum Household Savings** (single-family home TPO providers only): ensure participating households experience the equivalent of at least 20% monthly utility bill savings compared to the average utility bill to every participating household.

Please note that NCEF is responsible for marketing, outreach and customer acquisition to prospective Customers. However selected TPO providers can also engage in marketing, outreach, and customer acquisition at their discretion, provided they represent NSFA accurately and any Customer(s) who ultimately participate meet NSFA's eligibility requirements.

The Scope of Work may be altered to accommodate necessary changes agreed upon between NCEF and the selected TPO providers during the contract negotiations phase of this RFP.

5. SOLAR FOR ALL SELECTED FEDERAL REQUIREMENTS

Any household benefiting from an NSFA project must experience at least 20% energy savings compared to average costs in the utility service territory. Projects located on commercial properties have additional benefit sharing requirements to be monitored, verified, or implemented by NCEF. Selected TPO providers will work closely with NCEF to confirm that financial product offerings enable the NSFA savings requirements. In addition, NSFA funds are subject to certain federal requirements such as Build America, Buy America (BABA) and Davis Bacon and Related Acts (DBRA). For more details on BABA and DBRA, including exemptions and waivers, see Appendix C in addition to NCEF's NSFA Program Guidance documents at <https://nevadacef.org/solar-for-all/>, and the EPA Solar for All [Notice of Funding Opportunity](#).

6. MINIMUM LEASE AND/OR PPA REQUIREMENTS

All TPO options must meet the following minimum requirements:

1. TPO option must include ongoing maintenance support as part of the lease/PPA contract and continue to offer maintenance support even in the case of sale of the system or the solar leases or PPA to third parties;
2. TPO option must include solar system insurance for the whole term of the Customer contract;
3. TPO option must include robust warranty management post-installation;
4. TPO option must be made available to Customer with no money down;
5. Site evaluation must include shading analysis and other system requirements reflected in NCEF's EPC qualification process (see more details at <https://nevadacef.org/solar-for-all/>); and
6. Allow for monetization of Renewable Energy Certificates (RECs) associated with the systems.

In addition, single-family TPO options must meet the following minimum requirements:

1. TPO option must be cash-flow positive on day one for Customer and include contracted first-year customer net savings minimums of 20% for Customer;
2. TPO option must allow Customers to receive a substantial part of the financial benefits afforded by federal tax incentives to the selected TPO provider(s) and be structured to yield projected net savings of 20% to Eligible Customers during the contract term;
3. Customer contracts must include production guarantees for the whole contract term; and
4. TPO option must allow for inclusion of basic enabling upgrades such as tree trimming and breaker boxes/panels.

7. PREFERRED LEASE AND/OR PPA REQUIREMENTS

In the evaluation of proposals, preference will be given to those that:

1. Propose to include pathways to ownership for Customers, including for example early repayment clauses and purchase options in lease contracts, or purchase options following milestones in PPAs;
2. Propose to use alternative approaches to underwriting instead of, or in addition to, FICO;
3. Propose approaches that limit risk exposure from escalators to Customers; and
4. Includes choices in the contract pricing structure for consumers.

8. PROPOSAL REQUIREMENTS

Proposal submissions should not exceed 40 pages, 1" margins, 12-point font, single-spaced (excluding attachments). Submissions should include the following three sections, in addition to the attachments listed further below:

Section 1: History, Qualifications, and Experience

- **Cover Page:** Include a cover page with your organization’s EIN, unique entity identifier (UEI) from SAM.gov, primary contact, and whether your company is interested in being a TPO provider for single-family residential rooftop solar and/or commercial solar.
- **Company Information:** Provide background on your company, including size, location, areas of operation, business model, years in operation, financial health, and organizational experience operating as a solar energy and/or storage TPO provider. If relevant, include your experience working with low-income and disadvantaged communities, including using alternative underwriting approaches. Disclose any history of regulatory violations, non-compliance, or fraud. Include as an attachment your company’s last three (3) years of audited financial statements and at least three (3) references as an attachment (see Appendix B - Reference Questionnaire).
- **Personnel & Qualifications:** Provide an overview of your team, including roles, responsibilities, and relevant experience. Include one-page resumes for at least three (3) and up to five (5) key personnel (see Appendix A – Template Resume).

Section 2: Technical Proposal

- **TPO Approach:** Describe your operational approach to third-party ownership of photovoltaic and battery systems, including how you handle installation (e.g., directly or subcontracted), management and reporting on PV and energy storage systems, software platform(s) used (including security protocols), customer service approach, and potential risks, challenges, and mitigation approaches in the next five years. Clearly state whether you plan to be a TPO provider only, or both the TPO and EPC/installer in addition to system owner.¹
- **Organizational capacity plan:** Describe your plan for scaling up organizational capacity (staffing, software, and other resources) to deliver on this proposed contract.
- **Subcontractors:** Describe the use of contractors and your approach to communicating with, supervising, and assuring performance/compliance of subcontractors, in addition to prior experience with any specific subcontractors, including those in NCEF’s vetted contractor [network](#), particularly if operating as a TPO and not as an EPC.
- **Operations:** Describe your company’s approach to energy production monitoring (devices and software used). Detail how you compile and report this production data.
- **Maintenance:** Describe how you handle maintenance scheduling, performance guarantees, warranty servicing, repairs, and eventual decommissioning of photovoltaic and energy storage systems. Describe your approach to portfolio sales and how you would ensure ongoing operations and maintenance in the event of a portfolio sale.
- **Technology:** Detail the photovoltaic and battery storage products (manufacturers and models) your team or subcontractors have training and experience with, including procurement practices and warranty information for major components (e.g., inverters).
- **Lease and/or PPA Structuring:** Provide a detailed description of how you analyze, underwrite, and structure lease or PPAs with Customers. Describe how you would address the minimum and preferred requirements included in Section 6 and 7 above. Provide a detailed description of how you would handle buyout and transfer of system leases or PPAs including the process and price schedule. Provide a detailed description of proposed terms, conditions, and processes around customer defaults. Clearly state how your approach changes for each customer segment for which you are interested in being a TPO provider (i.e., single-family residential, commercial).

¹ Note that all EPCs must undergo a qualification vetting process to work on projects funded through NSFA. See more details at <https://nevadacef.org/solar-for-all/>

- **Tax Benefit Monetization:** Describe your proposed approach for federal tax monetization (including ITC and MACRS), and your openness and preferences for NCEF providing a tax credit bridge loan for the portion of the tax credit.
- **Renewable Energy Certificates (RECs):** Provide details about your REC monitoring and monetization strategy. Do you already have a REC buyer you prefer to work with?
- **Federal compliance:** Describe your organization’s policies, procedures, and experience in complying with key federal requirements, as applicable, including reporting, Build America Buy America, and Davis Bacon and Related Acts.
- **Other services:** Describe any other services you can or would like to provide, such as resident income verification or marketing and outreach. Note that costs for these additional services will not be determined by this RFP, and should be excluded from the cost proposal below (or, if included, priced separately).

Section 3: Cost Proposal

- **Fees:** Provide a cost proposal that includes a detailed and comprehensive description of any fees your company proposes to assess on an installation, including any setup or subscription fees or developer fees, O&M reserve fees, inverter, microinverter, or battery replacement fees, or any other related costs including non-solar enabling upgrades (e.g., roof repairs, panel upgrades, wiring upgrades, etc.).
- **Lease / PPA Model(s):** Respondents should submit a Microsoft Excel-based model that demonstrates the monthly lease payment or PPA rate charged to customers over a 20-year period as the output. The model can include up to three scenarios for commercial TPO and up to three scenarios for single-family TPO, if needed. The model should be editable such that changes made to assumptions automatically flow down to the outputs of the model. Other preferred model assumptions for commercial TPO and single family TPO are noted below in Table 1 and Table 2, respectively. Respondents may also submit commentary and suggestions on the assumptions noted below. Respondents should add additional assumptions as necessary so that the model is inclusive of all potential fees, costs, and revenue sources (e.g., maintenance costs, REC revenue, tax credit benefits, etc.), including a brief explanation of the basis for each assumption.

Table 1. Commercial TPO Assumptions

| Assumption | Explanation |
|--|--|
| Average system size | 250 kW |
| Average capacity factor | 19.8% |
| % of systems in an Energy Community (i.e., 10% ITC bonus) | 86% |
| Battery Storage | No battery storage included |
| Rebate | \$250 per kWdc installed capacity forgivable loan per system |
| Other financing terms to TPO provider | <ul style="list-style-type: none"> • 24-month Section 48 tax credit bridge loan with 3% interest • 12-year loan for the remaining project costs with interest rates as follows <ul style="list-style-type: none"> ○ 3% to 8% for project hosts that are community-based or community-led organizations, such as Tribes, community-based nonprofit organizations, local governments, and rural electric cooperatives, and |

| | |
|--|--|
| | affordable housing, state governments, and nonprofits ○ 5% to 10% for all other project hosts |
|--|--|

Table 3. Residential TPO Assumptions

| Assumption | Explanation |
|--|--|
| Average system size | 5 kW |
| Avg starting utility bill | \$1,411 |
| Utility bill escalation | 3% |
| Avg bill after solar | \$661.75 |
| Average capacity factor | 19.8% |
| % of systems in an Energy Community (i.e., 10% ITC bonus) | 86% |
| Battery Storage | No battery storage included |
| Loan terms (interest rate, tenor) | Respondent includes a loan interest rate and tenor necessary to achieve the minimum 20% bill savings (i.e., \$282 in Year 1) |

9. ATTACHMENTS

- One-page resumes for at least three (3) and up to five (5) key personnel. (See Appendix A – Template Resume)
- At least three (3) professional references from site hosts, customers, or finance institutions with whom you have completed similar projects. Include contact information and a brief description of the work performed. (See Appendix B - Reference Questionnaire. Completed Reference Questionnaires should be submitted directly to NCEF by reference.)
- Section 3 Cost Proposal – Lease model (.xlsx)
- The last three (3) years of audited financial statements.
- Additional attachments may be included but are discouraged and should be kept to a minimum.

10. EVALUATION CRITERIA

Proposals will be evaluated based on the following criteria and will be consistently evaluated and scored based on the following factors and relative weights:

A. History, Qualifications, and Experience (35%)

- Demonstrated experience in developing and implementing TPO solutions in the photovoltaic and energy storage sectors.
- Demonstrated experience using alternative underwriting approaches and/or working with low-income and disadvantaged communities.
- Technical expertise in managing or overseeing the operation and maintenance of photovoltaic and energy storage systems.
- Ability to integrate software with lenders, third-party production monitoring, and community solar subscriber systems.
- Financial health evidenced in financial statements to sustain projects of applicable size and scope.
- Proven track record of servicing and maintaining projects on time and within budget.
- No history of regulatory violations, non-compliance, or fraud per background check.

B. Technical Proposal (30%)

- Clarity, feasibility, and reasonableness of TPO pricing, structuring, and implementation.
- Ability to meet applicable minimum and/or preferred requirements.
- Evidence of ability to comply with all relevant federal requirements, such as Davis Bacon and Related Acts (DBRA), Build America, Buy America (BABA).
- Tax credit and REC monetization strategy maximizes overall project benefits.

C. Cost Proposal (35%)

- High cost-effectiveness and efficient use of federal funds.
- Maximum financial benefits provided to Customers.

11. SUBMISSION INSTRUCTIONS

Submit your proposal electronically to info@nevadacef.org with the subject line “TPO RFP” no later than 11:59pm Pacific Time on February 19, 2025. Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (i.e., zipped) to ensure message delivery. Late submissions will not be considered. Only electronic responses will be accepted.

NCEF will not respond to individual submissions or publish publicly a compendium of responses. A response to this RFP will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

12. QUESTIONS

All questions regarding this solicitation shall be submitted to info@nevadacef.org with the subject line “TPO RFP Question” by February 4, 2025 at 11:59pm Pacific Time. NCEF targets posting answers on its website on February 7, 2025.

13. TERMS AND CONDITIONS

NCEF reserves the right to accept or reject any or all proposals, and to negotiate with any respondent. All materials submitted as part of the proposal become the property of NCEF and may be used as deemed necessary. The selected vendor(s) will be required to enter into a formal contract with NCEF.

Appendix A – Resume Template

A Microsoft Word version of Appendix A is available for download [here](#).

| | | | |
|---|--|------------------|--|
| Name of RFP Respondent (Firm): | | | |
| Individual's Name: | | | |
| Individual's Title: | | | |
| Years in Classification: | | Years with Firm: | |
| BRIEF SUMMARY OF PROFESSIONAL EXPERIENCE | | | |
| Include a summary of the proposed individual's professional experience. | | | |
| | | | |
| RELEVANT EXPERIENCE | | | |
| Include timeframe, company name, company location, position title held during the term of the contract/project and details of the contract/project. | | | |
| | | | |
| EDUCATION | | | |
| Include institution name, city, state, degree, and/or achievement and date completed/received. | | | |
| | | | |
| CERTIFICATIONS | | | |
| Include type of certification and date completed/received | | | |
| | | | |

Appendix B – Reference Questionnaire

A Microsoft Word version of Appendix B is available for download [here](#).

1. BUSINESS REFERENCE INSTRUCTIONS

The Nevada Clean Energy Fund (NCEF) requires business references for each RFP response.

- RFP respondents should provide Appendix B to every organization providing a business reference.
- Completed questionnaires should be submitted to info@nevadacef.org with “**TPO RFP Reference**” in the subject line.
 - **Do not return the Reference Questionnaire to the Proposing Vendor.** References must be submitted to NCEF by the entity writing the reference.
- The completed Reference Questionnaire must be received no later than the due date in *Section 2*.
- In addition to collecting the Reference Questionnaire, NCEF may contact references by phone.
- NCEF requests all questions be answered.
- If an answer is not known, please answer as ‘U/K’.
- If the question is not applicable, please answer as ‘N/A’.
- If additional space is needed to answer a question or provide a comment, please attach additional pages.
- If attaching additional pages, please place your company/organization name on each page and reference the appropriate RFP number.
- NCEF will treat completed Reference Questionnaires as confidential. NCEF will not disclose submitted references but will confirm if a reference has been received.

2. REFERENCE INFORMATION

| | |
|------------------------------|--|
| Company Providing Reference: | |
| Contact Name: | |
| Contact Title: | |
| Contact Phone: | |
| Contact Email Address: | |

3. REFERENCE QUESTIONS

Provide a numerical rating corresponding to the below rating methodology.

| Category | Rating |
|--------------------------------|--------|
| Poor or Inadequate Performance | 0 |
| Below Average Performance | 1-3 |
| Average Performance | 4-6 |
| Above Average Performance | 7-9 |
| Excellent Performance | 10 |

| QUESTION | COMMENT | RATING |
|----------|---------|--------|
|----------|---------|--------|

| | | |
|--|--|--|
| In what capacity have you worked with this vendor in the past? | | |
| Rate the vendor's knowledge and expertise. | | |
| Rate the vendor's flexibility relative to changes in the project scope and timelines. | | |
| Rate your level of satisfaction with soft and/or hard copy materials produced by the vendor. | | |
| Rate the dynamics/interaction between the vendor and your staff. | | |
| Rate your satisfaction with the products developed by the vendor. | | |
| Rate how well the agreed upon, scope of work and planned schedule was consistently met and deliverables provided on time and per specifications. | | |
| Rate the overall customer service and timeliness in responding to customer service inquiries, issues, and resolutions. | | |
| Rate the knowledge of the vendor's assigned staff and their ability to accomplish duties as contracted. | | |

Appendix C – DBRA and BABA Requirements

Davis-Bacon and Related Acts Compliance

Davis-Bacon and Related Acts may or may not apply to an NSFA-supported project. All projects whose construction is funded by Nevada Solar for All federal funds must comply with all [Davis Bacon and Related Acts \(DBRA\)](#) (40 U.S.C. 3141 et seq.) requirements. Financial assistance recipients are responsible for complying with DBRA requirements. NCEF assists NSFA financial recipients with DBRA compliance via its vetted contractor network, training vouchers, and informational resources. Questions about DBRA compliance should be sent to communitysolar@nevadacef.org

Properties should be advised that if using NSFA federal funds for structural components of a new construction project such as roof reinforcements, DBRA requirements may apply to the entire property. EPA applies the Purpose, Time, and Place (PTP) test to define the scope of a project. Additional information on the PTP test is provided below.

Note, however, that under Solar for All, DBRA requirements do not apply to any form of Financial Assistance which meets any of the following criteria:

- Financial Assistance which exclusively funds pre-construction (e.g. permitting or design work) or post-construction activities (e.g. subsidies for subscriptions to already constructed solar assets).
- Financial Assistance which serves end-users who are individual homeowners or tenants of single-family homes or multifamily buildings when these individual end-users ultimately select the contractor(s) and execute the contract(s) for the construction work, as opposed to NCEF, a Subrecipient, or a contractor hired by NCEF or a Subrecipient.
- Financial Assistance which serves end-users who meet the definition of Federally Recognized Tribal Entities, as defined under this Assistance Agreement, when these Federally Recognized Tribal Entities ultimately select the contractor(s) and execute the contract(s) for the construction work, as opposed to NCEF, Subrecipient, or a contractor hired by NCEF or Subrecipient.
- Financial Assistance which serves any end-user when such Financial Assistance is less than \$250,000 for a project and the end-user ultimately selects the contractor(s) and executes the contract(s) for the construction work, as opposed to NCEF, Subrecipient, or a contractor hired by NCEF or Subrecipient.

Build America Buy America Compliance

Build America Buy America may or may not apply to an NSFA-supported project. The Build America, Buy America Act – Public Law 117-58 (41 U.S.C. 83), requires that federal funds used for the construction of a public infrastructure project must comply with the following:

1. All iron and steel used in the project are 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 that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; 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 construction material standards are listed below.

BABA applies to “public infrastructure,” which is defined broadly in 2 CFR 184.4(d). The following types of Solar for All projects are deemed infrastructure for the purposes of BABA applicability:

1. The public infrastructure portion of any property (e.g., retail in a mixed-use multi-family property) where the principal purpose of the Financial Assistance is to directly benefit such portion of the property;
2. Privately-owned commercial buildings when they meet the “public function” test;
3. Residential-serving community solar projects, which EPA deems “structures, facilities, and equipment that generate, transport, and distribute energy” per 2 CFR 184.4(c).

The following types of Solar for All projects are not deemed infrastructure for the purposes of BABA applicability:

1. Single family homes;
2. Privately-owned, non-mixed-use, multi-family housing properties;
3. Privately-owned residential portions of mixed-use properties;
4. Any privately-owned, behind-the-meter energy generation and storage project that does not otherwise meet the definition of infrastructure.

The inclusion of the following types of funding, support, guarantee, or sponsorship in the funding stack of any Solar for All project does not trigger BABA, in and of itself or in combination:

1. Low-Income Housing Tax Credit (LIHTC);
2. Fannie Mae and Freddie Mac Backed Multifamily Mortgages;
3. Federal Housing Administration Insured Multifamily Mortgages;
4. HUD Section 8 Funding;
5. Other Federal, State, Tribal, or Local Housing Assistance Funding Sources: in general, subsidies issued by federal, state, Tribal, or local housing assistance funding sources that do not confer equity or ownership stakes for the governmental funding source do not trigger BABA applicability.

The ultimate determination on BABA applicability for a particular project is always *fact-specific*. BABA applicability is assessed at the time of provision of Financial Assistance based on the terms, limitations, and requirements of the Financial Assistance. Applicability does not change retroactively based on a change of use (e.g., if a ground floor apartment is re-zoned for a restaurant). Recipients may not temporarily modify or mischaracterize usage to intentionally avoid BABA compliance.

There are program-wide BABA waivers and project-specific BABA waivers. EPA has issued several program-wide waivers that may be applicable to certain projects. This includes a temporary BABA waiver for domestically assembled solar modules to some Solar for All awardees, including NCEF, on January 10, 2025. The waiver applies to expenditures on solar panels made on or after January 10, 2025 until December 31, 2025, so long as those panels are installed by June 30, 2026. The EPA's full waiver can be found [here](#). In addition, the [De Minimis Waiver](#), which states that there may be costs associated with the project that would be subject to BABA but are considered de minimis to the overall project (no more than a total of 5% of total project cost). In this instance, the recipient may qualify for a De Minimis Waiver. The [Small Project Waiver](#) for projects under \$250,000 may or may not apply to NSFA projects. EPA could issue additional program-wide BABA waivers in the future. If you believe your project is covered by a program-wide waiver, notify NCEF. Additional information on requesting a project-specific BABA waiver is provided below.

NSFA funds that refinance a construction loan using non-federal funding sources for eligible technologies following the completion of construction may not implicate BABA.

Site hosts are responsible for ensuring that they comply with BABA, if applicable. NSFA requires manufacturer certification letters for every product used in each BABA-applicable project unless a valid waiver is in place. BABA certification letters are needed for each project and cannot be copied between projects. Contractors do not create the certification letter; the manufacturer of the item being purchased (e.g., the company producing the iron used on a project) is required to attest to the required information. Multiple items supplied from the same manufacturer may be listed on one certification letter. A BABA-applicable project using many products will likely need many separate certification letters.

Site hosts should be advised that if using NSFA federal funds for structural components of a new construction project such as roof reinforcements, BABA requirements may apply to the entire property. EPA applies the Purpose, Time, and Place (PTP) test to define the scope of a project. Additional information on the PTP test is provided below.

Site hosts should reach out to NCEF if they have questions about BABA applicability.

Requesting a Project-Specific BABA Waiver

Pursuant to Section 70914(b) of BABA and 2 CFR 184.7 EPA may waive BABA requirements where EPA finds that:

- 1) applying the domestic content procurement preference would be inconsistent with the public interest;
- 2) 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) 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.

Waivers may be requested from EPA if assistance recipients reasonably believe a waiver is justified under paragraph (a) of 2 CFR 184.7. A request from assistance recipients to waive the application of the Buy America Preference must be provided to EPA in writing. Note that there is currently no public interest waiver that applies generally to the Solar for All program. EPA expects project-level public interest waivers to be rare, as most projects should be able to comply with BABA requirements by obtaining certification letters, requesting project-level product non-availability waivers where appropriate, and using the already approved De Minimis Waiver. EPA expects waiver requests to take several months (2 to 6+) for approval after submission to the EPA.

Purpose, Time, and Place (PTP) Test

EPA applies the Purpose, Time, and Place (PTP) test to define the scope of a project. Additional information on the PTP test is provided below.

EPA will use a “Purpose, Time, and Place” (PTP) test to determine a “project” for BABA and DBRA applicability. This ensures that projects are not intentionally separated into pieces as an attempt to avoid BABA or DBRA compliance. As an example, if federal funds provide \$1 to a Qualified Project involving construction work, as defined under 29 CFR Part 5, that also receives non-federal funds to ensure the completion of the same project, DBRA and BABA would apply to all construction work necessary to complete that project if the PTP test is met. While each analysis will be fact specific, generally the PTP test will consider whether, regardless of the number of individual contracts, the contracts or activities funded are closely related in purpose, time, and place. The PTP test considers whether the activities are integrally and proximately related to the whole, but also recognizes that many activities are undertaken in segregable phases that are distinct in purpose, time, or place. All three elements must be consistent for the activity to be considered a “project.”

Purpose: Is the purpose for the funded activity segregable? For example, a Brownfields Revolving Loan Fund (RLF) Cooperative Agreement is awarded for \$5M. The recipient plans to award five loans for \$1M each to different recipients for different projects. The purpose for the award is distinct and each loan would be considered distinct “projects.”

Time: Is the timing of the funded activity distinct? For example, in FY23, a state receives a cooperative agreement to develop the structure and guidance for a recycling grant program for their state. In FY24, the state award is amended and it receives additional funds that will fund the grant pool. These are both distinct in purpose and time and would be distinct “projects.”

Place: A county receives a grant from the state in the “time” example above. The city plans to use the grant to fund two recycling facilities. One in the upper county and one in the lower county. Each has unique structural requirements. The place of the activity is distinct and would be considered separate “projects.”

If the solar panels are installed at the same time the other construction is undertaken, the Recipient should consider whether the activities are segregable (i.e. are there clear and discrete phases in the project that separate solar panel installation from general construction,

which indicates that solar serves a different purpose than general construction under the purpose, time, place test [PTP]) and whether the solar panels are essential for residency (i.e. is a certificate of occupancy possible without the solar panels, and is there electricity without the solar, thereby making the panels ancillary rather than integral?; both of which indicate that solar serves a different purpose than general construction under the PTP test).