

Congress of the United States  
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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October 30, 2023

The Honorable Jennifer Granholm  
U.S. Department of Energy  
1000 Independence Avenue SW,  
Washington, D.C. 20585

Dear Secretary Granholm:

As members of the House Committee on Science, Space, and Technology (the Committee), it has come to our attention that the U.S. Department of Energy (DOE) has recently issued dozens of funding opportunity announcements (FOAs) that appear to heavily encourage the use of unionized labor, requiring applicants to demonstrate how they are advocating for unionization inside their organization.<sup>1</sup> This type of direction is in clear conflict with long-standing federal acquisition regulations (FARs) that ban federal contractors from either encouraging or discouraging unionization.<sup>2</sup> These FARs are in place to ensure a meritorious selection process and to protect taxpayer dollars from mismanagement and political bias. Until recently, DOE FOAs included specific language acknowledging these regulations and DOE's apparent shift in FAR compliance is deeply alarming. It calls into question its ability to manage funding opportunities properly and fairly. For this reason, the Committee requests answers to the below questions and documents applicable to DOE's compliance with relevant FARs.

In place since 2009, FAR 48 CFR § 31.205-21, states that, "***costs of any activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing are unallowable.***"<sup>3</sup> This language clearly discourages organizations from taking sides on matters related to the unionization of its employees.

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<sup>1</sup> Sam Ricketts, Chris Bast, Hannah Argento-McCurdy, *Implementing America's Clean Energy Future*, Center for American Progress, (Sept. 14, 2023), <https://www.americanprogress.org/article/implementing-americas-clean-energy-future/>

<sup>2</sup> Federal Acquisition Regulations for Labor Relations Costs, 31 Fed. Reg. 31.205-21 (Sept. 22, 2023) (to be codified at 48 C.F.R. § 31.205-21).

<sup>3</sup> *Id.*

Despite this, in January 2023, DOE began including new language in its FOAs that directs applicants to submit a Community Benefits Plan in line with the Biden Administration's Justice40 Initiative.<sup>4</sup> As part of these plans, applicants are instructed to provide "*specific detail on how to ensure the delivery of measurable community and jobs benefits, e.g., through milestones and the use of tools such as good neighbor agreements, local hire agreements, project labor agreements, other collective bargaining agreements, or similar agreements*".<sup>5</sup>

To date, DOE has deemed the Administration's Community Benefits Plans a requirement in approximately 40 current FOAs.<sup>6</sup> For example, DOE's Solar-thermal Fuels and Thermal Energy Storage via Concentrated Solar-thermal Energy FOA, issued on September 9, 2023, and the Silicon Solar Manufacturing, and Dual-use Photovoltaics Incubator FOA, issued on July 6, 2023, both state that DOE will weigh the Community Benefits Plan at 15% of the total application.<sup>7</sup>

In contrast, DOE FOAs that closed prior to January 2023 have no mention of Community Benefits Plans and even include language explicitly acknowledging the existence of FAR 48 CFR § 31.205-21, stating "*costs to support or oppose union organizing, whether directly or as an offset for other funds, are unallowable.*"<sup>8</sup> Further, several DOE FOAs that did not close before January 2023, such as the Regional Clean Hydrogen Hubs Program issued on September 22, 2022, appear to have been altered in January to include the Administration's Community Benefits Plan language. For these altered FOAs, DOE failed to remove its reference to CFR § 31.205-21 compliance, sending a bizarre and confusing message to applicants. This language is now absent from new DOE FOAs.

Removal of the reference to FAR 48 CFR § 31.205-21 in FOAs, paired with the addition of pro-unionization Community Benefits Plan language, is understood by industry leaders to mean that unionized labor is now encouraged by DOE, if not a prerequisite to receive the grant. Decisions like these undermine the public's trust in DOE's actions by giving the perception that political bias is influencing policy.

The Committee has a duty to ensure that DOE is adhering to current federal regulations and that they are spending taxpayer dollars in an efficient and appropriate manner. Encouraging unionization is an inappropriate attempt to insert politics into science. The Biden Administration should prioritize good federal investments over special interests. The Committee requests that the

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<sup>4</sup> DEP'T OF ENERGY, COMMUNITY BENEFITS PLAN 101 INFORMATIONAL VIDEO (2023), [https://www.energy.gov/sites/default/files/2023-07/Community\\_Benefits\\_Plan\\_Webinar.pdf](https://www.energy.gov/sites/default/files/2023-07/Community_Benefits_Plan_Webinar.pdf).

<sup>5</sup> List of EERE Funding Opportunity Announcements, DEP'T OF ENERGY, <https://eere-exchange.energy.gov/Default.aspx?Foaldbefcd7fa-c10a-45d3-874c-33e0a3374709> (last visited October 23, 2023); see also List of OCED Funding Opportunity Announcements, DEP'T OF ENERGY, <https://oced-exchange.energy.gov/>.

<sup>6</sup> *Id.*

<sup>7</sup> DEP'T OF ENERGY OFFICE OF SOLAR ENERGY TECHNOLOGIES, FUNDING NOTICE: SOLAR-THERMAL FUELS AND THERMAL ENERGY STORAGE VIA CONCENTRATED SOLAR-THERMAL ENERGY (2023), <https://www.energy.gov/eere/solar/articles/funding-notice-solar-thermal-fuels-and-thermal-energy-storage-concentrated>.

<sup>8</sup> DEP'T OF ENERGY OFFICE OF CLEAN ENERGY DEMONSTRATIONS, FUNDING OPPORTUNITY ANNOUNCEMENT (FOA) NUMBER: DE-FOA-0002779: REGIONAL CLEAN HYDROGEN HUBS FUNDING OPPORTUNITY ANNOUNCEMENT (2022), <https://oced-exchange.energy.gov/FileContent.aspx?FileID=a3fd4d32-84a8-4fb4-bfef-ebb098c10320>

Department provide a response to the below questions and document requests by November 13, 2023.

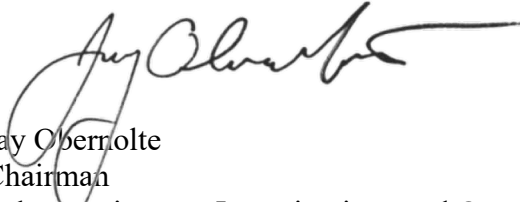
1. We request DOE provide the Committee with internal Departmental communications and documents from the Office of Clean Energy Demonstrations and the Office of Energy Efficiency and Renewable Energy pertaining to the addition of Community Benefits Plan language in these FOAs – requiring the advocacy of unionization as well as the removal of the warning against such advocacy.
2. How should applicants that consist of non-unionized labor apply for DOE funding in order to remain legal and not run afoul of relevant CFRs?
  - a. Will DOE be providing guidance to industry regarding this change? If so, when?
3. How does DOE believe this change will affect organizations utilizing non-unionized labor?
4. Did DOE meet with any outside organizations or previous applicants regarding this change? If so, who did DOE meet with and when?
5. Why did DOE decide to make these changes to the FOA requirements? What are the intended goals and purposes of this change?
6. We request the Department also provide original and all earlier versions of the FOAs for Solar and Wind Grid Services and Reliability Demonstration Program issued on August 2, 2022, and its Regional Clean Hydrogen Hubs Program issued on September 22, 2022.

Should you have any questions please contact Troy Hall of the Committee staff at (202) 225-6371. Thank you for your time and consideration regarding this matter.

Sincerely,



Frank Lucas  
Chairman  
House Committee on  
Science, Space, and Technology



Jay Obernolte  
Chairman  
Subcommittee on Investigations and Oversight  
House Committee on  
Science, Space, and Technology

cc:

The Honorable Zoe Lofgren  
Ranking Member  
House Committee on Science, Space, & Technology