



Chicago Metropolitan Agency for Planning

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June 24, 2011

REQUEST FOR PROPOSALS (RFP) NO. 074

SELECTION OF LOAN AND PROGRAM ADMINISTRATOR FOR RESIDENTIAL RETROFIT FUND PROGRAM OF ENERGY IMPACT ILLINOIS (EI2) PROGRAM

Chicago Metropolitan Agency for Planning (CMA) is requesting proposals from interested firms including financial institutions, and partner organizations to manage the Residential Retrofit Fund Program for Energy Impact Illinois (EI2) program as described in the enclosed Request for Proposals (RFP). If your organization is qualified and experienced in performing the described services, CMA would appreciate receiving your application as indicated in this Request for Proposal. The deadline for receipt of submissions in response to the Request for Proposal is **3:00 p.m., July 18, 2011**.

On January 28, 2011, RFP 061 was issued for the Selection of Loan And Program Administrator(s) for Residential Retrofit Fund Program of The Chicago Region Retrofit Ramp-Up (CR3) Program. We were unsuccessful in securing a contract as a result of that RFP. Therefore CMA is re-bidding the program. We have also modified the scope of this RFP to eliminate the potential restriction on the amount of funds used for a loan loss reserve, to eliminate a minimum leverage requirement, and to clarify the required documentation of capital commitments.

Further, previously called Chicago Region Retrofit Ramp-Up (CR3) program, the program is now called Energy Impact Illinois (EI2).

A non-mandatory information session will be held on June 29, 2011 3:00 p.m. CST in CMA's offices, 233 South Wacker Drive (Willis Tower), Suite 800. Applicants may attend in person or by webinar/conference call. To attend in person, call CMA at 312-454-0400 to be added to the Willis Tower Visitor list. Driver's license or state ID required for entry into building tower. To register for the webinar/conference call, send an email to yambriz@cmap.illinois.gov requesting RFP 074 webinar/conference call information. An email with the webinar/conference call information will be sent to all who have registered by noon on June 28, 2011.

Participation in the information session is non-mandatory, but is offered as a way to best understand the scope of work we are trying to accomplish here. CMA strongly encourages those interested in participating in this program to attend. The presentation, questions and responses noted during the information discussion will be posted on our website with the RFP.

Thank you, and if you have any questions, please call me at (312) 386-8788.

Sincerely,

Margaret McGrath
Grant/Contract Officer

Enclosure

CMA RFP 074

REQUEST FOR PROPOSAL (RFP) NO. 074

SELECTION OF LOAN AND PROGRAM ADMINISTRATOR FOR COMMERCIAL RESIDENTIAL RETROFIT FUND PROGRAM OF ENERGY IMPACT ILLINOIS (EI2) PROGRAM

The Chicago Metropolitan Agency for Planning (CMAP) invites appropriate firms including financial institutions (FIs) (including banks, saving and loans, credit unions, community development financial institutions (CDFI), mortgage companies, and similar entities) and partner administrative organizations to submit proposals to act as loan and program administrator of the Residential Retrofit Fund Program of Energy Impact Illinois (EI2) program as described in the enclosed Request for Proposals (RFP). Please read each section carefully for information regarding the proposal and submittal instructions.

SECTION 1: Background and General Information

Project Background

In May 2010, the U.S. Department of Energy (DOE) issued 25 awards nationally through the competitive Energy Efficiency and Conservation Block Grant (EECBG) Retrofit Ramp-Up stimulus initiative (now known as the [BetterBuildings Initiative](#)). A regional collaboration led by the Chicago Metropolitan Agency for Planning (CMAP) – in partnership with the City of Chicago Department of Environment, with support from the City of Rockford and suburban and regional stakeholders – was awarded \$25 million to transform the market for carrying out energy-efficient retrofits to commercial and residential buildings in northeastern Illinois.

The objective of the Energy Impact Illinois (EI2) program is to build a comprehensive energy retrofit program which includes strategies to build a sustainable business model to aggressively retrofit commercial, industrial, and residential buildings across northeastern Illinois. EI2 accelerates the existing Chicago Climate Action Plan implementation strategy and the Chicago Energy Efficiency Building Retrofit Strategy, across the metropolitan Chicago region including Rockford, leveraging significant existing resources and program components from partners, financial institutions and utility companies. The implementation of the EI2 is further integrated into the region's comprehensive plan, GO TO 2040. Over the three-year grant period, the project is expected to retrofit as many as 8,000 units, leverage more than \$500 million in local investments, and create more than 2,000 jobs.

For a more complete description of each program component and the activities include, please see a detailed program summary here: <http://www.cmap.illinois.gov/energy>.

The overall EI2 vision is to facilitate the transition of a fragmented retrofit market made up of a loose set of programs to a fully developed, efficient market that can operate with efficiencies of both scale and scope. When this happens, homeowners and business owners will have the information they need to make rational decisions about whether, how, and how much they desire to improve their energy performance. Financial products will be readily available to facilitate the installation of selected measures, and suppliers can respond to consumer demand for retrofits with consistent, efficient, and affordable solutions.

About the Project Partners

The Chicago Metropolitan Agency for Planning (CMAP) is the official regional planning organization for the northeastern Illinois counties of Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will. CMAP developed and now leads the implementation of *GO TO 2040*, metropolitan Chicago's first comprehensive regional plan in more than 100 years. To address anticipated population growth of more than 2 million new residents, *GO TO 2040* establishes coordinated strategies that help the region's 284 communities address transportation, housing, economic development, open space, the environment, and other quality-of-life issues. See www.cmap.illinois.gov for more information.

The City of Chicago Department of Environment develops environmental policies, initiatives and programs, enforces the City's environmental code and regulations and works with other City departments, sister, state and federal agencies, businesses and not-for-profit organizations to protect and conserve our natural resources, prevent pollution, foster energy efficiency and engage Chicagoans in adopting environmentally-friendly behaviors. Mayor Richard M. Daley released the Chicago Climate Action Plan (CCAP), which is comprised of strategies and actions to meet Chicago's climate goals of reducing carbon dioxide equivalent emissions by 25% by 2020, and 80% by 2050. See <http://www.cityofchicago.org/city/en/depts/dae.html> and <http://chicagoclimateaction.org> for more information.

EI2 Steering Committee

The EI2 Steering Committee's mission is to align missions and leverage resources, both technical and financial, to ensure that EI2 is fully implemented and obtains maximum impact. The Steering Committee plays a lead role in program development and strategic planning, proposal review & selection, reviewing progress and performance monitoring and making recommendations for corrective action. Membership currently includes leaders from [ComEd](#), [Peoples/North Shore Gas](#), [Nicor](#), [Illinois Department of Commerce and Economic Opportunity \(DCEO\)](#), [Illinois Science and Technology Coalition](#), the [Northern Illinois Energy Project](#), [CMAP](#), and the Cities of [Chicago](#) and [Rockford](#).

About the EI2 Program

The EI2 program initiates and manages program development, deployment, ongoing consultation, and evaluation of the necessary elements of a successful regional retrofit strategy. During the initial three year grant period funded by the U.S. Department of Energy, the EI2 program will retrofit at least 8,000 units, leverage more than \$500 million in local investments, and create more than 2,000 jobs.

Through a series of RFP's, CMAP is contracting with a number of firms to deploy various components of the EI2 program (in addition to this RFP) for the EI2 Project in three areas: (1) Information System (2) Finance Vehicles and (3) Workforce Intermediary.

CMAP has the ultimate responsibility for assuring that the program is in full compliance with federal regulations, however, CMAP has contracted with [CNT Energy](#) to serve as the implementation agency, and will be responsible to CMAP for day-to-day management of sub-recipients, oversight of data collection, program reporting, and ARRA compliance with all program sub-recipients. CNT Energy will serve as lead liaison for the EI2 program, responsible for the day-to-day communications with all EI2 sub-recipients including but not limited to the loan and program administrator within this request for proposal. The firm chosen to lead the activities in this RFP will be accountable to both CNT Energy and CMAP for all reporting and accounting procedures.

The EI2 program strategy includes three primary areas of work:

1. Access to comprehensive information;
2. Functional finance tools; and
3. Access to a trained workforce.

Statement of Purpose:

The EI2 Partners are seeking firms(s) including qualified financial institutions individually or in partnership with retrofit program administrators to create an innovative financial product and administer the Residential Energy Efficiency Loan program. EI2's goal is to support new financing mechanisms that promote private market investment in energy efficiency (EE) measures in one to four unit residences throughout the seven-county metropolitan Chicago region and the City of Rockford. In particular, EI2 is interested in financial products that are sustainable beyond the initial three year grant period funding by the Department of Energy. EI2 expects that this financial product will provide extensive leverage of other sources of private capital (ideally 10:1 or greater), in addition to the EI2 \$2 million investment. Applicants are requested to provide a firm commitment of the capital required to issue the total loan amount with submittal of the response to this RFP. Applicants submitting a letter of interest from a capital source will

be required to provide a firm letter of commitment within one week of CMAP board approval of their proposal.

Residential buildings, for the purposes of this program, are privately-owned structures used as residences and not having more than four residential units. This includes single family homes, two flats, etc. up to a total of 4 units. It also includes condominium units so long as they are individually heated. An energy efficiency retrofit is the installation of measures in an existing building designed to achieve at least a 15 percent estimated reduction in energy usage.

The Residential Retrofit Fund Program is one of six new lending products that will be created through the EI2 program. CMAP has up to \$2 million available to allocate under this Request for Proposals (RFP). The Fund aims to stimulate the retrofit market in residential buildings by making new financial products available in the marketplace that are attractive and affordable to homeowners. This Program intends to assist financial institutions in lending to homeowners by providing a loan loss reserve, or other innovative credit enhancement methods that, when paired with existing or new lending programs, will increase participation and market penetration of retrofit activity. EI2 believes that it is important to partner with financial institutions in order to leverage their expertise in the real estate, consumer finance, and/or retrofit markets, to build an effective and sustainable program.

The goals of the program include:

1. Increasing energy efficiency retrofit participation in the residential real estate sector
2. Supporting the investment of private capital in lending markets for energy efficiency projects
3. Providing increased access to capital for homeowners for energy efficiency upgrades and retrofits
4. Proving the cost savings benefits and market viability of retrofit financing
5. Creating a sustainable market that will continue after the conclusion of the EI2 program

The Residential Retrofit Fund Program is intended to be used primarily as leverage to attract private capital or facilitate the issuance of loans utilizing other capital sources. It is NOT intended to be used as a grant to cover the marginal costs of adding retrofits to other projects. CMAP is seeking as large a leverage ratio as possible across the fund. Similar programs have obtained leverage ratios greater than 10:1, or a total of at least \$20 million in retrofit expenditures for a \$2 million investment. Additionally, the offering of funds is expected to have some or all of the following impact on loan guidelines:

- Extend tenors. For example a loan tenor of 5 years could be extended to 7 to 10 years, allowing for the energy savings to cover the debt service.
- Potentially allow for the recognition of energy savings on the borrower's ability to make loan payments.
- Reduction in interest rates.
- Elimination of security or collateral requirements, thereby allowing "point of sale" loans, reducing the application complexity and time, and increasing access to financing for homeowners who have been negatively impacted by recent downturns in real estate values.

A common method of meeting these goals is the establishment of a loan loss reserve fund (LLR). In this model, the EI2 funds would reimburse the FI for a portion of actual losses experienced by it for qualified energy efficiency retrofit loans that become delinquent or in default. The EI2 funds effectively transfer a significant portion of the default risk from the lender, thus allowing for increased activity in this market. The reserve fund cannot be used to directly fund retrofit activity or serve as a loan guarantee and in no situation will CMAP extend any guarantee or commit additional funds beyond those that capitalized the loan loss reserve fund. Instead, the fund is intended to reduce risk for lenders and allow them to share the burden of risk of potential defaults.

An LLR and other innovative methods for creating credit enhancements can be proposed in response to this RFP. Note, however, that this RFP is intended to provide for the cost of the credit enhancements.

The cost of administering the program, including marketing, reporting, monitoring, loan origination, and loan servicing, should be rolled into the cost of the loan or its origination as discussed in Section 2 below.

A successful applicant will be responsible for lending and administration (oversight and execution) of retrofit activities as part of this request for proposal. Applicants should provide a detailed execution plan with roles and responsibilities clearly defined for all of the necessary components to support a retrofit, including recruitment of homeowners, assistance in arranging for energy audits, financing, assistance with contractor selection and oversight, and performance monitoring. E12 recognizes that there is an array of possible partnerships that are plausible. For example, bidders can suggest that homeowners utilizing qualified contractors to upgrade a furnace and conduct air sealing and other measures are eligible for a point of purchase consumer loan program to finance the improvements; or a firm experienced in managing retrofit programs could partner with a financial institution to administer the program and service the loans; or a financial institution may choose to provide both the financial and administrative services.

Bidders are permitted to propose a partnership framework that they feel best meets the scope of services detailed below, but all proposals must fulfill two roles: program administrator and financial institution (FI) (see Section 2 below for a description of these roles). Partnerships or teams must designate one lead applicant, and must clearly define the roles and responsibilities for the lead and any and all subcontractor(s). The lead applicant is solely responsible for any and all sub-contractual business arrangements. The subcontractors will have no legal or contractual recourse to the Chicago Metropolitan Agency for Planning. Proposals that do not incorporate 100 percent of all components listed in this RFP will not be considered. Interested firms must respond to all of the requirements outlined below.

The selected program participant(s) will be responsible for the creation and daily management of Residential Retrofit Fund Program administration, assuring that all objectives are met, and that program progress is continually communicated to CNT Energy and CMAP. As this program will be funded through an ARRA grant from the US Department of Energy, the selected firm may also be called on to meet with representatives from the Federal government performing monitoring functions.

General Information

As a result of responses to this RFP, CMAP plans to review submissions and, if necessary, conduct interviews with selected applicants it determines can best meet the requirements outlined below. Negotiations will be held as necessary to select participants that CMAP believes can best satisfy its requirements. Subject to "Reservation of Rights" below, it is anticipated the term of the contract(s) will be for a period ending on May 18, 2013.

Finalists will be selected for negotiations, at which time the final structure of the program financing/budget will be solidified. The terms of the loans and credit enhancement budgets will be laid out in the application and finalized in an Agreement between CMAP and the successful applicant

SECTION 2: Scope of Project and Procurement Details

The Scope of Services is organized into the two primary roles discussed above, program administration and lending. Together, the roles generally represent the breadth of services that are envisioned for the E12 Residential Retrofit Fund Program. These roles may be fulfilled by a financial institution alone, or a partnership between an administrator and one or more financial institutions. CMAP encourages firms and institutions to suggest innovative approaches and partnerships that demonstrate a sound approach to lending for retrofit activity in the residential sector and that best cover this scope.

Administrative responsibilities include:

- *Program Design & Implementation.* In consultation with the E12 team, the program administrator will lead the design and implementation of the residential program.
- *Recruiting, Vetting, and Enrollment of Homeowners into the Loan Program.* Aggressively marketing the loan fund and conducting outreach to homeowners as described above. Additionally, screening owners for credit worthiness, verifying that applicants, activities and projects selected for loans comply with ARRA & EECBG requirements, and resolving program participant issues.
- *Measurement and Verification.* Ensuring homeowners provide permission to the E12 program to access utility bill data necessary to demonstrate effectiveness of the EE retrofit.
- *Compliance with the Requirements of all Applicable Federal, State and Local Laws, Codes, and Regulations.* Ensuring that all applicable Federal, State and local laws, codes, regulations, DOE policy and guidance, and instructions within this request for proposals, are compiled with unless relief has been granted by the DOE and CMAP; Ensuring flow down of the requirements of applicable Federal, State, and local laws, regulations, DOE policy and guidance and instructions in the RFP to sub-recipients at any tier to the extent necessary to ensure compliance with the requirements and verify that contractors are meeting these requirements. Applicable provisions of these requirements will depend upon the nature of the financial product utilized by the winning bidder and the extent of the retrofits undertaken, as discussed in the Department of Energy document, "Guidance for Energy Efficiency and Conservation Block Grant Grantees on Financing Programs" with an effective date of March 14, 2011 available at: http://www1.eere.energy.gov/wip/pdfs/eeecbg_financing_guidance_2011-03-15.pdf. CMAP and CNT Energy will work with the selected entity(ies) to outline the exact requirements. Awardees of the Residential Retrofit Fund Program must adhere to all program notices issued by U.S. Department of Energy applicable to the EECBG program including any future amendments.
- *Reporting.* Providing CNT Energy monthly and quarterly progress reports, implement any corrective courses of action when needed, and ensure that all required data is entered into the E12 reporting software, including but not limited to:
 - Job Creation and retention (including number of hours worked by constructors).
 - Energy use and demand savings
 - Job scope details
 - Utility account information, including signed release form
 - Loan Portfolio data collection including but not limited to:
 - Number of loan applications received
 - Number and dollar amount of loans provided
 - Loan and interest payments received

Lender responsibilities include:

- *Creative Collaboration in Program Design.* Develop creative options to enhance and improve the Program.
- *Energy Efficiency Loans.* A capital commitment to offer and originate loans according to the agreed range of terms and subject to FIs' credit approval. Develop forms for use in loan application process, loan disbursement and reporting.
- *Customer credit pre-screening services.* Focus Project development efforts with creditworthy customers to achieve high levels of access to loans for customers.
- *Loan collections and administration.* Service the loan by collecting loan payments and manage delinquencies and defaults, subject to Loan agreement terms with customers. FIs must follow their normal collection procedures and must outline these in their response to this RFP. Developing a secondary market for these loans is a desired long-term outcome, and if the FI wishes to sell loans or outsource servicing, it should describe procedures for doing so, but must ensure that the terms and conditions follow the loan.
- *Reporting.* In conjunction with the program administrator, provide information as needed on the success of Loans, collections activity in default situations, and other matters (subject to customer privacy policies).
- *Demonstrate the benefits of an energy efficiency retrofit in the residential sector.* The FI is expected to work with the EI2 partners to disseminate information on this program so it may be used as a model in the future or in other locations.
- *Marketing.* Assist with marketing the loan products to targeted entities such as existing clients. A common challenge to implementing EE measures is lack of financing, so the availability of the Loan can overcome this barrier and motivate participation. Further, the FI should have a goal to structure projects so that the dollar amounts of the estimated energy cost savings offset the amount of the monthly Loan payments to generate immediate positive cash flow. Thus, the Loan offer is integral to Loan marketing and will be integrated with the overall EI2 marketing. In addition, the following Loan marketing strategies and alliances are recommended and could be further explored and developed in a proposal response:
 - FI's Existing Customers. The selected FI will market the Program to its existing residential mortgage and consumer loan customers. The FI will identify customers, make contact, present the Program and bring them to the program administrator for project development services. These customers could be pre-screened for Loan eligibility.
 - Mortgage Refinancing or origination. There is an opportunity to piggyback EE investments with mortgage refinancing and incorporate the EE project investment into the new first mortgage principal.
 - Market Aggregators. The Program and Loan offers can be marketed to entities that reach and manage multiple properties and property owners. These deserve special sales initiative and offer the opportunity for one high-level sale to result in an aggregated set of projects.
 - Trade Allies. The FI may partner with a trade ally to provide a coordinated approach to marketing retrofit services, identifying necessary improvements, contracting the work, and providing financing.

EE Loans

The goal of the Program is to offer EE Loans on attractive terms and longer tenors and broaden access to financing for EE retrofits. Only loans to residential buildings with no more than five units will be offered under this program. The following list summarizes typical terms of the Loan products. These details will

be finalized with the selected partner FI. A preliminary Loan product term sheet should be included in the RFP response for each financial product recommended. (Attachment 1).

- *Eligible borrowers.* Owners, lessees, or managers of residential buildings located in the seven-county Chicago Metropolitan region and the City of Rockford will be eligible to borrow under the Program. Residential buildings, for the purposes of this program, are privately-owned structures used as residences with no more than four residential units. This includes single family homes, two-flats, etc., as well as condominium units so long as they are individually heated. FIs should consider setting specific lending criteria that broaden access to credit for energy efficiency projects, based upon the credit enhancement provided by the E12 funds.
- *Eligible Projects.* Energy efficiency retrofits appropriate for the structure and its use allowable under the EECBG program. An energy efficiency retrofit includes the installation of measures in an existing building designed to achieve at least a 15 percent estimated reduction in energy. When EE projects are completed as part of a gut rehab, savings are those exceeding measures required by code.

Many types of energy efficiency measures could be financed. Typical improvements and allowable expenditures for funds will include, but are not limited to, equipment, equipment installation, energy-efficient fixtures, and retrofits installed on property owned, leased, or managed by the loan applicant. Eligible energy efficient fixtures and retrofits may include, but will not be limited to, mechanical systems and components including HVAC and hot water; electrical systems and components including lighting , pumps, fans, motors; and building envelope improvements including windows, doors, air sealing, and insulation.

A complete definition of eligible projects will be developed based on energy savings and other qualitative and economic criteria developed by the program administrator in consultation with CMAP, and CNT Energy. Technical studies confirming that projects meet these criteria can be shared with partner FIs as part of Loan origination and appraisal.

- *Loan application.* Standard loan application materials will be provided by the FI.
- *Loan terms.* It is anticipated that 5-15 year terms are reasonable, but the FI should propose what it believes would be effective.
- *Interest rate.* Our starting assumption is that interest rates will be market-based for the type of loan product, or below, factoring-in the extra security offered by the credit enhancements provided under this program. Rates should be fixed for each Loan at the time of Loan application approval, or a variable rate should be justified by the FI. The FI should provide a published interest rate index as a benchmark for Loan pricing.
- *Payment schedule.* Monthly payments in arrears are anticipated, with Loans amortized mortgage style, that is, level payments of interest and principal. Alternatives should be justified in the proposal.
- *Loan size: minimum & maximum.* The actual parameters for the minimum and maximum loan size should be stated in the proposal. Milestones for lending will be agreed upon and set forth in the agreement with the selected entity.
- *Loan underwriting guidelines and security.* CMAP encourages bidders to consider an unsecured option, especially for smaller loan amounts that would be well suited for point of sale financing, but details should be proposed by FI. Borrower contribution, if needed, can be paid by recipient contribution, utility rebates or incentives, or other rebates and incentives. A prudent portion of estimated energy cost-savings can be included in this calculation. The FI can also file a Uniform Commercial Code Form 1 (UCC-1) on the installed equipment.

- *Loan disbursement and flow of funds during project construction.* To be developed with FI. The simplest method is a single loan disbursement to contractor, authorized by borrower, following completion and acceptance of the project. Methods for construction advances for larger projects may be investigated. Multiple projects may be grouped for implementation.
- *Prepayment option.* Option to prepay the outstanding Loans in whole or part without penalty is ideal, but anticipated terms should be described in the proposal.

CMAP and the E12 Program will provide:

- *Program Coordination.* CMAP and CNT Energy will coordinate project implementation among all partners and parties.
- *Funding.* Up to \$2,000,000 will be used for credit enhancement for energy efficiency loans from the partner FI. The credit enhancement could be in the form of a 'loan loss reserve,' according to a formula to be negotiated, and/or other credit enhancements, to support energy efficiency financing.
- *Broad Marketing and Referral Source.* As part of the E12 program, there will be a regional marketing and communication strategy as well as an information portal for connecting property owners to information about energy efficiency retrofits, tools for assessing energy usage and information on E12-supported and other financing programs for homeowners. The selected entity(ies) will be expected to contribute information about the program to the information portal as well as receive referrals from interested homeowners. While we anticipate these services will be a path of entry for many homeowners, it does not eliminate the responsibility of the selected entity(ies) to provide marketing services.
- *Reporting Structure and Oversight.* An electronic system will be provided for capturing data on expenditures made and project specific energy usage, projected savings, and financial performance. CMAP will submit data from this electronic system to the US DOE systems as required, but the applicant must agree to submit information to the electronic system. Training will be provided on use of the system. Additionally, CMAP and the E12 partners will provide oversight of the selected entities to ensure that they are complying with all applicable provisions of the agreement and federal requirements.
- *Compliance Training and Assistance.* CNT Energy will assist the selected entity in determining how to apply the federal provisions to the program or to individual projects and documenting compliance. These requirements may include but are not limited to ARRA reporting, Davis-Bacon, Buy American, NEPA, and SHPA requirements. The applicability of these requirements varies based upon the structure of the financing arrangement, a discussion of which can be found at http://www1.eere.energy.gov/wip/pdfs/eecbg_financing_guidance_2011-03-15.pdf. Ultimate responsibility for compliance with the contracted agreements will remain with the selected entity.
- *Energy Efficiency Expertise.* The E12 and implementation agency partners are well versed in energy efficiency measures, energy auditing, and verification. As necessary, we will consult with the selected entities on establishing program standards and best practices and will provide project specific expertise as necessary.
- *Work Force Guidelines.* As part of the E12 program, we will be creating a standard set of guidelines and requirements for certification for energy efficiency auditors and/or contractors as well as construction specifications. As these guidelines are developed, the selected entity will be expected to integrate them into the program.

Use of Grant Funds

General. CMAP is interested in innovative financing mechanisms and proposals for best accomplishing the goals outlined in this RFP and that meet the restrictions of the EECBG monies funding this program. While we anticipate proposals incorporating a loan loss reserve fund and have provided specific guidance for the creation of a loan loss reserve below, other financing mechanisms are welcome. A proposal detailing other mechanisms should provide adequate details on the operation of such a fund as to allow the EI2 partners to judge the effectiveness and cost structure of the approach. A detailed agreement covering other approaches will be drafted, similar in nature and scope as the LLR agreement discussed below.

Loan Loss Reserve Fund. A LLR is intended to enable the FI to offer longer terms, lower interest rates, and broader access to finance. We anticipate LLR arrangements to have leverage ratios between 10:1 and 20:1. This leverage ratio may be higher or lower, depending on the risk assessment by the FI respondent to this RFP. Note that CMAP is only interested in leverage dollars directly supporting energy efficiency retrofits. Funds supporting other aspects of a project, such as general renovation, are NOT considered leverage.

CMAP grant monies will be deposited with the partner FI pursuant to an LLR Agreement between CMAP and the FI. The LLR Agreement will create three accounts: an escrow account (“Escrow Account”), a reserve account (“Reserve Account”), and an account to house funds that are retired from the Reserve Account after Loans have been fully paid (“Reflow Account”), all specifically defined in the LLR Agreement. Monies will first be placed in the Escrow Account at the participant FI. Then, for example, on a quarterly or other basis (the timing of the transfer is another variable that should be determined by applicant), as the FI makes eligible EE Loans, the agreed amount of funds for the loss reserve will be transferred from the Escrow Account to the Reserve Account. Once funds are transferred to the Reserve Account, they are available for the FI to draw on in the defined event of loss. The LLR structure takes a “portfolio approach” to the credit structure of the EE Loan program. The FI will be making a number of EE Loans. The goal of the credit enhancement is to create sufficient loss reserves—from LLR funds and the FI’s own loss provisioning—to cover the estimated level of losses. With such reserves in place, in the event of a Loan default the lender will remain largely whole, at least to recover principal, at loss levels at or below the planned level.

Risk-Sharing Formula. The proposal should specify the ratio of the LLR funds to the total original principal amount of loans in the EE Loan portfolio. The proposal should also specify the share of losses that the LLR will pay. The maximum allowable is 90%.

LLR Agreement. To implement an LLR finance program with a selected FI, an LLR Agreement will be executed by and between the FI and CMAP. Key terms of the LLR Agreement include the following:

- *Definition of the Escrow Account.* The “Escrow Account” will house the original grant monies deposited by CMAP with the partner FI. Funds in this account, and their transfer into the Reserve Account, will be controlled by an Escrow Agreement executed by and between the FI and CMAP.
- *Definition of the Reserve Account.* The “Reserve Account” is available to the FI to cover legitimate principle losses due to default that are otherwise unrecoverable using the FI’s standard default recovery mechanism.
- *Definition of Loss and Event of Loss.* “Loss” will be defined as principal only on the Loan. “Event of Loss” will be tied to the definition of Loan default and acceleration under the FI’s Loan Agreement with its borrower, to be as proposed by the FI. A certain number of days after this event, e.g., 30 days, then the FI can disburse funds from the Reserve Account to cover the agreed loss share.

- *Interest on Accounts.* CMAP may require accounts to be held in a non-interest bearing transactional account in order to maintain FDIC insurance. However, should CMAP direct the accounts to be interest-bearing, interest shall accrue to CMAP. Federal regulations state that all interest accrued must be used for eligible program purposes, and this includes “topping off” the LLR to enhance its sustainability over time. CMAP will make the determination on how to appropriate the interest earned in accordance with the federal regulations.
- *Responsibility for and Distribution of Recoveries.* The FI will be responsible for recovery actions on defaulted Loans. Recovered monies, net of reasonable collections costs, will be distributed back to the Reserve Account in proportion to the FI’s share of losses.
- *Underwriting criteria.* The parties will agree in advance on underwriting guidelines for the Loans. FI will be able to protect Loans through the Reserve Account that meet the underwriting criteria. Underwriting criteria can be adjusted during the course of the Program as a mutually re-negotiated and written amendment to the LLR Agreement. The terms of the Loans will be enumerated, including eligible borrowers, eligible projects, minimum and maximum Loan size, Loan tenors, etc.
- *Availability Period.* The timeframe for adding Loans to the portfolio and shifting funds from the Escrow Account to the Reserve Account will be defined and tied to grant requirements.
- *Disposition of Loan Loss Reserve Funds at end of Loan Period.* Funds will remain in the Reserve Account, the amount of which, in a fully subscribed portfolio, will be equal to the leverage ratio percentage times the amount of outstanding loans. When the amount of the loans in the Reserve Account drops below that reserve percentage, the amount in excess will be transferred to the Reflow Account for additional eligible uses under the DOE/EECBG requirements. At this time, it is anticipated that funds transferred to the Reflow Account will be designated to support further EE lending or otherwise enhance credit for EE loans, unless otherwise determined by CMAP per the LLR Agreement (see bullet below on *Reprogramming Funds in the Escrow Account*). Distribution of funds from the Reserve Account to the Reflow Account will occur on the same schedule as funds are transferred under the availability period determined under the above bullet (presumptively monthly or quarterly—FIs should make a recommendation on this point in their response). When the EE Loan portfolio is fully retired (the conditions for this eventuality will also be spelled out in the LLR Agreement), all re-flow Reserve Account funds will be transferred back to the Reflow Account, and, from there the future use of the funds can be redirected by CMAP in accordance with federal DOE requirements. At this time, CMAP anticipates that the monies in this Reflow Account will be lent for the purposes of EE projects.
- *Change in leverage ratio.* Please consider whether, upon a lower-than-expected rate of default on the portfolio, the ratio of funds held in the LLR could be reduced.
- *Program Fees.* Under the Program, the partner FI may pay a percentage of the loans as a fee to the program administrator to perform the services requested in this RFP. The details of this fee should be disclosed in the proposal. These fees can be added to the Loan and paid by the borrower, or can be covered through other arrangements as outlined in a proposal.
- *Reprogramming Funds in the Escrow Account and the Reflow Account.* Funds in the Escrow Account and the Reflow Account belong to CMAP. As part of the negotiating process between CMAP and the FI, reasonable lending targets will be established. CMAP will have the option to re-allocate the funds in the Escrow Account, if the targets are not met, to a different credit enhancement or E12 program area. The Agreement will indicate the ability of CMAP to reprogram uses of these funds, as needed, to adapt to Program operating experience, such as for incentives to increase marketability and uptake of Loans.

- *Accommodating the portfolio “ramp-up” period.* Before the portfolio builds up, a single loan loss can be a large percentage of the outstanding total Loan principal. Thus, in the beginning, a larger contribution to the Reserve Account may be negotiated to give the FI the necessary level of risk-sharing during the portfolio ramp-up period. The FI is asked to consider this in its response.

The LLR mechanism is not a loan guarantee; it uses the EECBG grant funds to mobilize lending by sharing risk with the partner FI, but it does not eliminate risk for the lender. There is no guarantor in this mechanism. The liability of CMAP will be limited to the grant funding provided only. The FI is at risk for the repayment of all Loan amounts in the EE Loan portfolio in excess of the loan loss reserves provided. Therefore, prudent lending origination and administration must be maintained. The Reserve Account must and will stay in place until the Loan portfolio is retired, at which point any remaining funds will be designated to support further EE lending or another use determined by CMAP.

- *Flexibility to Reprogram Funds.* CMAP maintains the flexibility to reprogram all funds not committed to a reserve account in order to further the program goals and to enable more EE projects. CMAP will continuously evaluate the Program’s success, gauging the effectiveness of the initial designated uses of funds. CMAP will retain the ability to shift funds from one designated use to another or from one FI to another, provided the funds have not been tied directly to a Loan that supports an EE project.

The Agreements will include a provision that will allow CMAP to retain this control over all non-committed funds (the Escrow Account and Reflow Account funds). Until funds are moved from the Escrow Account to the Reserve Account, funds in the Escrow Account can be reprogrammed by CMAP.

SELECTION PROCESS SCHEDULE

On June 29 at 3:00 p.m. CST, a non-mandatory information session will be held in CMAP’s offices, 233 South Wacker Drive (Willis Tower), Suite 800. Call CMAP at 312-454-0400 to be added to the Willis Tower Visitor list. Driver’s license or state ID required for entry into building tower. To join by webinar/conference call, e-mail mmcgrath@cmap.illinois.gov requesting RFP 074 webinar/conference call information by Tuesday June 28 at noon.

June 24:	RFP Issued
June 29:	Information Session
July 18:	Applications Due
July 27:	Finalist Interviews
August 10:	Estimated CMAP Board approval
August 17:	Letter of Commitment from Funding Source Due

EVALUATION AND AWARD PROCESS

All applications submitted in response to this RFP will be reviewed and analyzed for completeness and the expertise in performing the scope of work requested.

The following criteria will be used to evaluate proposals:

1. Quality of Financial Product

Provision of a loan product that offers homeowners a strong incentive to conduct EE retrofits and offers a repayment amount closely in line with anticipated energy savings with highly competitive terms; The structure of the loans including the eligible borrowers, eligible projects, minimum and maximum loan sizes, anticipated number of loans made, expected tenors and terms, underwriting guidelines, and interest rate; Sustainability of the program and the ability to continue beyond the project period.

2. Meeting a Demonstrated Need and Market

Demonstrated ability and plan to serve residential homeowners that would not otherwise undertake an EE retrofit or who would be unable to secure necessary financing; Program has a clearly defined market to operate in and draw eligible properties for participation; Program creates a model for servicing this market that could be replicated amongst similar markets or in other locations.

3. Marketing and Outreach Plan

Plan and approach to marketing and recruiting building owners; Commitment to working with E12 partners to coordinate efforts with larger E12 marketing plan; Evidence that efforts undertaken will result in an adequate supply of properties to meet program goals.

4. Soundness of Approach

Clarity of plan for implementing the project and meeting stated objectives; Plan for implementing the program will result in the completion of planned retrofits within the specified timeframes; Timeline clearly demonstrates the number of loans and dollars expended over the term of the program; Applicant and partners have demonstrated experience in completing similar projects.

5. Applicant Capacity

Demonstration of required skills and experience to implement project as proposed; Documented commitment of capital to issue loans; Capacity of staff to conduct necessary underwriting, processing, and servicing of loans projected; Capacity to offer the program in the seven county Chicago metropolitan region and the City of Rockford; Presence of capital commitments; Demonstrated experience and capacity to oversee and monitor energy efficiency activity including meeting all ARRA reporting requirements and compliance (Davis Bacon, NHPA, NEPA, etc.)

6. Leverage, Impact & Energy Savings

The E12 Project Partners will evaluate applicants using leverage and impact criteria. The main purpose of these criteria is to assure that E12 funds are used in the most effective manner possible. Higher leverage ratios will be rated more favorably. Although CMAP is not setting a minimum leverage ratio, similar programs have obtained leverage ratios greater than 10:1. Leverage ratios are counted as the total dollar value in energy efficiency improvements made (excluding any non-energy efficiency costs) per dollar of CMAP investment. Additionally, the E12 partners will evaluate the impact and potential energy savings from the proposed projects, viewing favorably energy reductions beyond the minimum required to be a retrofit, creation of spin-off private investment in construction, jobs created, energy cost savings, and other positive impacts.

7. Firm Reputation (Based on References)

All timely responses received to this RFP will be reviewed and interviews may be conducted with selected proposers CMAP determines can best meet the above requirements. A CMAP and E12 Project Partner committee will make the recommendation decision.

As applicable, negotiations will be held as necessary to select the firm that CMAP believes can best satisfy its requirements at rates it perceives are reasonable for the services provided. CMAP will then negotiate a scope of work and contract with the firm judged to be most qualified to conduct this work.

SECTION 3: Submittal Requirements

Proposals Must be Received at CMAP on or before 3:00 p.m. July 18, 2011

Submissions must be complete in responding to the RFP's major themes and scope of work, and be submitted in the following order:

1. Applicant Background & Experience

Please summarize the applicant and any partner's qualifications and experience to undertake this Program. Identify capacity in terms of staff and other resources necessary to implement the target number of loans within the project timeframe. Identify staff responsible for and relevant experience in providing DOE required data and meeting all ARRA, DOE and EECBG compliance requirements. Describe the level of effort and services the FI will devote and the general management approach the FI will take to make this Program succeed. Please also include a description of any of your institution's products and services that you will utilize in fulfilling the requirements of this RFP and information on the relevant client base that you may be targeting for marketing purposes.

Please provide an organizational chart showing the reporting lines between partners as well as key individuals involved in the program. Please indicate names of those who will play the following roles:

- Program Manager responsible for this Program who will provide the lead and primary point of contact for the program administration;
- Senior FI Officer(s), who will negotiate and execute documents on behalf of the FI, be available if and as needed to discuss policy matters, and provide program leadership;
- Other staff, e.g., legal counsel, risk manager, assistants to the Program Manager; and
- Indicate the number of branch officers, if any, who will be responsible for local Loan origination.

As an attachment, please provide a brief resume of the Program Manager and, if desired, please also provide resumes of other key FI officers or program administration staff to be involved in the Program.

2. Targeted Market and Marketing Plan

Provide a description of who you intend to serve with this program in terms of types of buildings, types of owners, and potential for EE retrofits. Identify the extent to which targeted properties are under-served by current financial products and the potential impact from their participation in this program. Describe your plans for marketing the program, including details on recruitment and screening of potential participants, and plans for working jointly with the E12 partners.

3. Financial Product & Implementation

Provide a narrative describing the proposed structure and terms of the loans, type and amount of leveraged capital, eligible borrowers, eligible projects, minimum and maximum loan sizes, anticipated number of loans made, expected tenors and terms, underwriting guidelines, interest rate, and the other parameters previously outlined. If proposing a secured product, outline the ability of the loan to be closed quickly and the ability to issue loans given the falling value of residential real estate in many areas of the region. Outline the expected loan volume (in dollars and number of loans) by quarter for the duration of the project period and identify the extent to which the program could be sustained beyond the project period (e.g. through repayment of borrowed funds or release of loss reserves). If program is sustainable beyond the project period, identify the volume of loans anticipated for three years beyond the project. Include summary of current and past consumer banking department loan and or residential mortgage portfolio performance over the past three (3) years. Provide sufficient evidence that program implementation can begin promptly upon contract signing.

If proposing a LRF, please respond to the proposed LRF structure and terms, including FI's proposed LRF risk-sharing formula. Please identify and discuss briefly the FI's position on key points in the LRF Agreement, working off the terms described in Section 2, above, including:

- Parameters of the risk-sharing formula
- Separation and definitions of the Escrow and Reserve Accounts
- Definition of Loss and Event of Loss
- Disposition of funds at the end of the Loan period
- Program fees
- Portfolio ramp-up period
- Reprogramming of funds in the Escrow Account and ideas for alternative uses of these funds to promote the Loans

If not proposing an LRF, please provide a similar level of detail on your proposed mechanisms for achieving the goals outlined in this RFP.

Approach to Credit and Underwriting Guidelines. Please provide a summary description of the FI's approach to (i) credit analysis of borrowers, (ii) underwriting guidelines and criteria for the energy efficiency Loan program, distinguished by customer market segment, and (iii) credit screening. Please address the Program goal of broadening access to finance and how the LRF can support this goal.

Loan origination and administration. Please provide a description of how the loan application procedure will work, description of requirements (or a checklist) for loan origination, and relevant servicing provisions (such as procedures for handling late payments or defaults).

Timeline and Production Goals. Please provide your anticipated timeline for program set-up and implementation, including the estimated number and dollar value of loans issued per quarter for the program period. If the program is sustainable beyond the program period, indicate an estimated number and value of loans for three years beyond the program period.

Compliance and Oversight: Please describe the process for oversight and monitoring including meeting all ARRA reporting requirements and compliance requirements (Davis Bacon, NHPA, NEPA, etc.)

4. Preliminary Loan Product Term Sheets

The respondent shall also sign and submit the "Preliminary Loan Product Term Sheet", (Attachment 1). Provide a separate term sheet detailing all lending product specifications for each financial product recommended.

5. Leverage, Impact, Energy Savings, and Sustainability

Provide a narrative description of how the proposal will leverage other resources and create energy savings and other impacts described in section 2. Provide the leverage ratio, calculated as the total value of energy efficiency retrofits made under the program (excluding any non-energy retrofit expenditures) to the value of the CMAP credit enhancement provided. Identify the extent to which the proposed program would be sustainable beyond the end of the EI2 project period and how it would contribute to creating a lasting resource for conducting residential energy efficiency retrofits.

6. Capital Funds Commitment

Provide the source and description of the funds available to be leveraged with this proposal, and include letters of commitment. . CMAP strongly encourages firm letters of commitment to be submitted with the proposal. Binding letters of capital commitment will be required no later than 7 calendar days after approval of the proposal by CMAP's board in order for CMAP to issue a contract in response to this RFP.

7. References

At least three references, including individual contact name, name of company and phone number, that CMAP may contact regarding the consultant's qualifications to undertake this project.

8. Letters of Commitment

Firms that plan on sub-contracting or relying on any other organization to do some of the work, provide services or equipment must include a letter from that organization describing their planned participation and commitment. Applicants are requested to provide a firm commitment of the capital required to issue the total loan amount with submittal of the response to this RFP. Applicants submitting a letter of interest from a capital source will be required to provide a firm letter of commitment within one week of CMAP board approval of their proposal.

9. Bidder Forms

The respondent shall also sign and submit the "Certificate Regarding Workers' Compensation Insurance," Attachment 2, and the "Information to be Provided by Bidder," Attachment 3.

Submission of Proposals

Three (3) paper copies of all applications as well as one (1) electronic version in PDF format on CD ROM or USB drive must be submitted no later than 3:00 p.m., July 18, 2011. Submissions must be in a sealed package or envelope. The applicant's organization name and address shall appear in the upper left corner of the package.

Submission of application by fax or e-mail is not acceptable. Submissions may be delivered to CMAP in person or sent (by U.S. Postal Service or other reliable means) to the following address:

Chicago Metropolitan Agency for Planning
Attn: Grant/Contract Officer
Response to RFP No. 074
233 S. Wacker Drive, Suite 800
Chicago, IL 60606

There will be no public opening of applications. Late submissions will be rejected and returned unopened.

Questions may be referred to Margaret McGrath, (312) 386-8788 or Email: mmcgrath@cmapp.illinois.gov.

SECTION 4: Contractual Agreement and Rights

Contractual Agreement

The contract CMAP anticipates awarding as a result of this RFP and subsequent rate submissions and negotiations, if any, will indicate the service requirements, time periods involved and applicable hourly rates. In addition, it will include the General Provisions, Section 5 hereto, and Special Provisions, Section 6 hereto, and Attachment 4 "Information to be provided by Firm at Contract Execution" which will apply to the contract.

Reservation of Rights

CMAP reserves the following rights if using them will be more advantageous to CMAP:

- a. Withdraw this application at any time without prior notice.
- b. Accept or reject any and all submissions, or any item or part thereof
- c. Postpone qualifications due date.
- d. Not award a contract to any submitter responding to this application.

- e. Award a contract without negotiations or discussions.

Contractors who are or have been seriously deficient in current or recent contract performance in the absence of evidence to the contrary or circumstances properly beyond the control of the Contractor shall be presumed to be unable to meet these requirements. Past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.

Materials submitted in connection with this application become the property of the Chicago Metropolitan Agency for Planning regardless of whether or not the proposing organization's proposal is selected.

SECTION 5: General Provisions

The following provisions apply to the solicitation to which this section is attached and to any contract that results from the solicitation:

1. Complete Agreement.

- a. This Agreement (which also may be herein referred to as "Contract"), including all exhibits and other documents incorporated or referenced in the agreement, constitutes the complete and exclusive statement of the terms and conditions of the agreement between CMAP and Contractor and it supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions.
- b. Order of Precedence: Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of the executed contract, including its exhibits; (2) the provisions of the RFP on which the contract is based including any and all Addendums; (3) the proposal submitted to CMAP by the Contractor in response to said RFP; and (4) any other documents cited or incorporated herein by reference.
- c. CMAP's failure to insist in any one or more instances upon the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of CMAP's right to such performance by Contractor or to future performance of such terms or conditions and Contractor's obligation in respect thereto shall continue in full force and effect. Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions that can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve it from responsibility for successfully performing the work without additional expense to CMAP.
- d. CMAP assumes no responsibility for any understanding or representations made by any of its officers, employees or agents prior to the execution of this Agreement, unless such understanding or representations by CMAP are expressly stated in this Agreement.
- e. Changes: CMAP may from time to time order work suspension or make any change in the general scope of this Agreement including, but not limited to changes, as applicable, in the drawings, specifications, delivery schedules or any other particular of the description, statement of work or provisions of this Agreement. If any such change causes an increase or decrease in the cost or time required for performance of any part of the work under this Agreement, the Contractor shall promptly notify CMAP thereof and assert its claim for adjustment within thirty (30) days after the change is ordered. A written amendment will be prepared for agreement between CMAP and the Contractor for changes in scope, time and/or costs. No amendments are effective until there is a written agreement that has been signed by both parties. No claim by the Contractor for equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.
- f. Changes to any portion of this Agreement shall not be binding upon CMAP except when specifically confirmed in writing by an authorized representative of CMAP.

2. Chicago Metropolitan Agency for Planning Designee. Only the Executive Director of CMAP, or designee, shall have the authority to act for and exercise any of the rights of CMAP as set forth in this Agreement, subsequent to and in accordance with the authority granted by CMAP's Board of Directors.

3. Allowable Charges. No expenditures or charges shall be included in the cost of the Project and no part of the money paid to the Contractor shall be used by the Contractor for expenditures or charges that are: (i) contrary to provisions of this Agreement or the latest budget approved by a duly-authorized official of CMAP; (ii) not directly for carrying out the Project; (iii) of a regular and continuing nature, except that of salaries and wages of appointed principal executives of the Contractor who have not been appointed specifically for the purposes of directing the Project, who devote official time directly to the Project under specific assignments, and respecting whom adequate records of the time devoted to and services performed for the Project are maintained by the Contractor may be considered as proper costs of the Project to the extent of the time thus devoted and recorded if they are otherwise in accordance with the provisions hereof; or (iv) incurred without the consent of CMAP after written notice of the suspension or termination of any or all of CMAP's obligations under this Agreement.
4. Reports and Methods of Payment.
 - a. Based on services performed, Contractor may submit invoices as frequently as once a month. CMAP is committed to reducing paper use and has established an electronic invoicing system. All invoices are to be submitted through email to:
accounting@cmapp.illinois.gov
 - b. Subject to the conditions of this Agreement, CMAP will honor invoices in amounts deemed by it to be proper to insure the carrying out of the approved scope of services and shall be obligated to pay the Contractor such amounts as may be approved by CMAP. Invoices shall detail expenses and amount of time spent on CMAP assignments. If an invoice is not acceptable, CMAP shall promptly provide the Contractor a written statement regarding its ineligibility or deficiencies to be eliminated prior to its acceptance and processing.
 - c. All payments will be transferred electronically to Contractor's business bank account. The successful Contractor will be requested to provide transfer numbers for the business bank account when the contract is finalized.
5. Audit and Access to Records.
 - a. The Contractor and its subcontracts under this Agreement shall preserve and produce upon request of the authorized representatives of CMAP all data, records, reports, correspondence and memoranda of every description of the Contractor and its subcontractors, if any, under this Agreement relating to carrying out this Agreement for the purposes of an audit, inspection or work review for a period of three (3) years after completion of the project, except that:
 - (1) If any litigation, claim or audit is started before the expiration of three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
 - (2) Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after its final disposition.
 - b. The Contractor shall include in all subcontracts, if any, under this Agreement a provision that CMAP will have full access to and the right to examine any pertinent books, documents, papers, and records of any such subcontractor involving transactions related to the subcontract for three (3) years from the final payment under that subcontract except that:
 - (1) If any litigation, claim or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

- (2) Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after its final disposition.

The term "subcontract" as used in this clause excludes purchase orders not exceeding \$2,500.

6. Suspension. If the Contractor fails to comply with the special conditions and/or the general terms and conditions of this Agreement, CMAP may, after written notice to the Contractor, suspend the Agreement and withhold further payments or prohibit the Contractor from incurring additional obligations of funds pending corrective action by the Contractor. If corrective action has not been completed within sixty (60) calendar days after service of written notice of suspension, CMAP shall notify the Contractor in writing that the Agreement has been terminated by reason of default in accordance with paragraph 11 hereof. CMAP may determine to allow such necessary and proper costs which the Contractor could not reasonably avoid during the period of suspension provided such costs meet the provisions of the U.S. Office Management and Budget Circular A-87 in effect on the date first above written.

7. Termination.

- a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure (hereinafter termed "Termination by Default") by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be affected unless the other party is given (i) not less than seven (7) calendar days written notice (delivered by certified mail, return receipt requested) of intent to Termination by Default, and (ii) an opportunity for consultation with the terminating party prior to Termination by Default.
- b. This Agreement may be terminated in whole or in part in writing by CMAP for its convenience (hereinafter termed "Termination for Convenience"), provided that the Contractor is given not less than seven (7) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate.
- c. If Termination by Default is effected by CMAP, an equitable adjustment in the price provided for in this Agreement shall be made, but (i) no amount shall be allowed for anticipated profit on unperformed services or other work, and (ii) any payment due to the Contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to CMAP by reason of the Contractor's default. If Termination by Default is effected by the Contractor, or if Termination for Convenience is effected by CMAP, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide payment to the Contractor for services rendered and expenses incurred prior to termination, in addition CMAP may include cost reasonably incurred by the Contractor relating to commitments which had become firm prior to termination.
- d. Upon notice of termination action pursuant to paragraphs (a) or (b) of this clause, the Contractor shall (i) promptly discontinue all services affected (unless the notice directs otherwise) and (ii) deliver or otherwise make available to CMAP all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing this Agreement, whether completed or in process.
- e. Upon termination pursuant to paragraphs (a) or (b) of this clause, CMAP may take over the work and prosecute the same to completion by agreement with another party otherwise.
- f. In the event the Contractor must terminate this Agreement due to circumstances beyond its control, the termination shall be deemed to have been effected for the convenience of CMAP. In such event, adjustment of the price provided for in this Agreement shall be made as provided in paragraph c of this clause.

8. Remedies. Except as may be otherwise provided in this Agreement, all claims, counterclaims, disputes and other matters in question between CMAP and the Contractor arising out of or relating to this Agreement or the breach thereof will be decided by arbitration. If the parties hereto mutually agree, a request for remedy may be sought from a court of competent jurisdiction within the State of Illinois, County of Cook.
9. Equal Employment Opportunity. The Contractor will comply with Executive Order 11246 entitled "Equal Employment Opportunity," as amended by U.S. Department of Labor regulations (41 CFR Part 60). In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or an applicant for employment because of race, religion, color, sex, national origin, ancestry, or physical or mental handicap unrelated to ability. The Contractor shall take affirmative actions to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, national origin, ancestry, or physical or mental handicap unrelated to ability. Such actions shall include, but not be limited to, employment, promotion, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay, other forms of compensation, and selection for training or apprenticeship. The Contractor shall cause the provisions of this paragraph to be inserted into all subcontractors work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that such provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
10. Small and Minority Business Enterprise. In connection with the performance of this Agreement the Contractor will cooperate with CMAP in meeting its commitments and goals with respect to the maximum utilization of small business and minority business enterprises, and will use its best efforts to insure that small business and minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.
11. Political Activity. No portion of funds for this subcontract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.
12. Prohibited Interest.
 - a. No officer or employee of CMAP and no member of its governing body and no other public official of any locality in which the Project objectives will be carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such objectives shall (i) participate in any decision relating to any subcontract negotiated under this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; or (ii) have any financial interest, direct or indirect, in such subcontract or in the work to be performed under such contract.
 - b. No member of or delegate of the Illinois General Assembly or the Congress of the United States of America, and no federal Resident Commissioner, shall be admitted to any share hereof or to any benefit arising herefrom.
 - c. The Contractor warrants and represents that no person or selling agency has been employed or retained to solicit or secure this Agreement, upon an agreement or understanding for a commission, percentage, bonus, brokerage or contingent fee, or gratuity, excepting its bona fide employees. For breach or violation of this warranty CMAP shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage bonus, brokerage or contingent fee, or gratuity.
13. Federal Reporting Standards.
 - a. The Contractor agrees that any material or design specified by the Contractor or supplied by the Contractor pursuant to this Agreement shall not infringe any patent or copyright and the

Contractor shall be solely responsible for securing any necessary licenses required for patented or copyrighted material used by the Contractor.

- b. If any claim is brought against CMAP by third parties for alleged infringement of third-party patent and copyright and intellectual rights, which claim is caused by breach of the Contractor's promise as contained in paragraph a of this clause, the Contractor shall save harmless and indemnify CMAP from all loss, damage or expense (including attorney's fees) due to defending CMAP from such claim.
- c. If the principal purpose of this Agreement is to create, develop or improve products, processes or methods; or to explore into fields which directly concern public health, safety or welfare, or if the Project is in a field of science or technology in which there has been little significant experience outside of work funded by federal assistance; and any discovery or invention arises or is developed in the course of or under this Agreement, such invention or discovery shall be subject to the reporting and rights provisions of U.S. Office of Management and Budget Circular No. A-102, and to the pertinent regulations of the grantor agency(ies) in effect on the date of execution of this Agreement. The Contractor shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts under this Agreement involving research, developmental, experimental or demonstration work.

14. Assignment.

- a. This agreement shall be binding upon, and inure to the benefit of, the respective successors, assigns, heirs, and personal representatives of CMAP and Contractor. Any successor to the Contractor's rights under this Agreement must be approved by CMAP unless the transaction is specifically authorized under federal law. Any successor will be required to accede to all the terms, conditions and requirements of the Agreement as a condition precedent to such succession.
- b. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of CMAP hereto, provided, however, that claims for money due or to become due to the Contractor from CMAP under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished to CMAP.

15. Subcontracts.

- a. Any subcontractors or outside associates or consultants required by the Contractor in connection with the services covered by this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Any substitutions in or additions to such subcontractors, associates or consultants will be subject to the prior approval of CMAP.
- b. All subcontracts for work under this Agreement shall contain those applicable provisions which are required in this Agreement.
- c. The Contractor may not subcontract services agreed to under this Agreement without prior written approval of CMAP.

16. Conflict of Interest. In order to avoid any potential conflict or interest, the Contractor agrees during the term of this Agreement not to undertake any activities which could conflict directly or indirectly with the interest of CMAP. Contractor shall immediately advise CMAP of any such conflict of interest. CMAP shall make the ultimate determination as to whether a conflict of interest exists.

17. Publication. CMAP shall have royalty-free, nonexclusive and irrevocable license to reproduce, publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data or other

materials specifically prepared under this Agreement, and to authorize other material to do so. The Contractor shall include provisions appropriate to effectuate the purpose of this clause in all subcontracts for work under this Agreement.

18. Identification of Documents. All reports, maps, and other documents completed as part of this Agreement, other than documents exclusively for internal use within the Contractor's offices, shall carry the following notation on the front cover or a title page or, in the case of maps, in the same area which contains the name of CMAP and of the Contractor. "This material was prepared in consultation with CMAP, the Chicago Metropolitan Agency for Planning, (<http://www.cmap.illinois.gov>)."
19. Force Majeure. Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control including, but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the Federal, state or local government; national fuel shortage; or a material act of omission by the other party; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.
20. Workers' Compensation Insurance. The Contractor and any subcontractors shall, at their own expense, obtain and maintain Workers' Compensation insurance to cover persons employed in connection with services under this agreement. The limits for the Worker's Compensation coverage shall be no less than the statutory limits required by the State of Illinois. A certificate of insurance must be included with this contract.
21. Independent Contractor. Contractor's relationship to CMAP in the performance of this Agreement is that of an independent contractor. Contractor's personnel performing work under this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of CMAP. Contractor shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including, but not limited to, social security, income tax withholding, unemployment compensation, workers' compensation insurance and similar matters.
22. Federal, State and Local Laws. Contractor warrants that in the performance of this Agreement it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder. Since laws, regulations, directives, etc. may be modified from time-to-time, the contractor shall be responsible for compliance as modifications are implemented. The Contractor's failure to comply shall constitute a material breach of this contract.
23. Hold Harmless and Indemnity. Contractor shall indemnify, defend and hold harmless CMAP, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss, or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct of Contractor, its officers, directors, employees, agents, subcontractors or suppliers, in connection with or arising out of the performance of this Agreement.
24. International Boycott. Contractor certifies that neither Contractor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulation of the U.S. Department of Commerce. This applies to contracts that exceed \$10,000 (30 ILCS 582).
25. Forced Labor. Contractor certifies it complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to CMAP under

this agreement have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).

Federally Funded Agreements

All of the requirements listed in **Federally Funded Agreement Certifications**, contained in Attachment 4, "Information to be Provided by Firm at Contract Execution", apply to the federally funded project. The selected firm will be required to sign the certifications and agree to include these requirements in each contract and subcontract financed in whole or in part with federal assistance.

SECTION 6: Special Provisions

1. Workers' Compensation. The State of Illinois Worker's Compensation Code requires the securing of workers' compensation by all non-state employers. The Submitter shall attest to understanding and complying with the State of Illinois Workers' Compensation Code requirement and submit a completed "Certificate Regarding Workers' Compensation Insurance," Attachment 2 to the RFP. In addition, the Submitter shall provide and maintain a waiver of subrogation endorsement.

Attachment 1: Preliminary Loan Product Term Sheets

In response to Chicago Metropolitan Agency for Planning (CMAP) Request for Proposal (RFP) 074 Selection of Loan and Program Administrator(s) for Residential Retrofit fund Program of Energy Impact Illinois (EI2) program dated June 24, 2011, the undersigned, as an individual(s) with the authority to bind the Proposer, understands and agrees to the specifications, terms, conditions and provisions of the RFP and product proposed below unless otherwise modified by mutual agreement of the parties. It is also agreed that the proposal submitted in response to the RFP is valid for ninety (90) calendar days from the proposal due date.

Please enter responses into the follow format. Please provide additional specifics where possible. Attach additional sheets if necessary. For ease of entry, feel free to copy and paste the table into an Excel spreadsheet; insert lines as necessary.

Borrowers: Eligible borrowers include owners of residential (1 – 4 unit) buildings in the seven county metropolitan Chicago area (Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will counties) and the City of Rockford.

Lender: FI, after having entered Agreements with CMAP.

Use of Proceeds & Eligible Projects: Loans must fund investment in energy efficiency measures in eligible buildings that meet certain efficiency criteria, in energy efficiency projects, and/or in building repairs necessary to implement the energy efficiency improvements. Equipment engineering and installation costs will be eligible.

Sources of Funds: Borrower will contribute a minimum of ___% own funds toward total Project Costs. Energy efficiency grants can be considered as borrower equity.

Minimum Loan: \$_____ (FI requested to propose).

Maximum Loan: \$_____ (FI requested to propose).

Loan Term: FI requested to propose Loan term.

Payment Schedule: FI requested to propose payment schedule. Please specify over what time period loans will be amortized.

Interest Rate: FI requested to define range based on Loan size, borrower credit, security, the mitigated risk (loan loss reserve), and other criteria.

Prepayment Option: FI requested to propose borrower prepayment options.

Loan Disbursement: FI requested to propose disbursement terms. FI can propose disbursing the Loan in one or several installments

Loan Repayment & Security:

To be proposed by FI. CMAP believes unsecured loans are more likely to meet the needs of this RFP, however, both secured and unsecured Loan products may be proposed by FI. Sources of security could include the following:

- a) For secured Loans, a deed of trust may be required, with anticipated loan-to-value ratios of 80-85% and up to 100%. It is expected that a prudent portion of estimated energy cost-savings will be included in this calculation.
- b) First security interest in installed equipment can be obtained, and FI may make a UCC-1 security filing.
- c) LRF funds.

Underwriting Criteria: FI requested to propose underwriting criteria. Sample criteria are for the commercial borrowers are indicated below:

- Debt to income ratio of ____
- Ratio of debt to total assets of _____.
- Borrower's own funds contributing minimum ____% [e.g. 20%] of project capital costs

Loan Application: Borrower shall submit the following documents to the FI to apply for the Loan (to be determined by FI, examples follow):

1. Loan application (provided by FI and completed by borrower).
2. Taxes for last two years.
3. Other additional documents (to be defined by FI).

Loan Origination Procedures &

Schedule: FI is requested to define Loan origination procedures and schedule, including FI response time for processing Loan applications, rendering credit decisions once complete information is received, and closing Loans on accepted applications.

If awarded a contract, the undersigned hereby agrees to sign the contract and to furnish the necessary certificates if any.

Proposer's Authorized

Signatory (Print): _____

Signature: _____

Title: _____

Company Name: _____

Address: _____

Telephone Number: _____

Date: _____

Attachment 2: Certificate Regarding Workers' Compensation Insurance

Certificate Regarding Workers' Compensation Insurance

In conformance with current statutory requirements of Section 820 ILCS 305/1 et. seq., of the Illinois Labor Code, the undersigned certifies as follows:

"I am aware of the provisions of Section 820 ILCS 305/1 of the Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with such provisions before commencing the performance of the work of this contract."

Bidder/Contactor _____

Signature _____

Name and Title _____

Date _____

Attachment 3: Information to be provided by Bidder

The Bidder is required to supply the following information (if necessary, attach additional sheets):

Firm Name: _____ Contact Person: _____

Business Address: _____

Telephone: (____) _____ FAX: (____) _____ E-mail: _____

Years of Experience: _____

Type of Firm – Sole Proprietor, Partnership, Corporation, JointVenture;Etc.: _____

Organized under the laws of state of: _____

Business License No.: _____ Business License Expiration Date: _____

List names and addresses of owners of the firm or names and titles of officers of the corporation:

Client list of services rendered currently and/or in the recent past:

<u>Type of Service/Product</u>	<u>Date Completed</u>	<u>Name and Address of Client</u>	<u>Contact Name and Phone Number</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Credit References (Include contact person's name, address, and telephone number for at least three references, one of which must be the Bidder's bank):

- a. _____

- b. _____

- c. _____

Bidder hereby certifies that it (check one): _____ IS _____ IS NOT an eligible Disadvantaged Business Enterprise (DBE) as defined Sec. III, provision 31g1). If "IS" is checked, attach copy of document that certifies Bidder's status as a DBE.



Chicago Metropolitan
Agency for Planning

233 South Wacker Drive
Suite 800
Chicago, Illinois 60606

312 454 0400
www.cmap.illinois.gov

Attachment 4: Information to be provided by Organization at Contract Execution (Updated 2/10/2011)

Federally Funded Agreement Certifications

Department of Energy –

ENERGY IMPACT ILLINOIS (EI2) PROGRAM

SIGNATURE

As the duly authorized representative of the contractor, I hereby certify that the contractor will comply with the attached certifications: DE-EE0003561/000, Chicago Metropolitan Agency for Planning, SPECIAL TERMS AND CONDITIONS.

Name of Contractor: _____

Printed Name and Title of
Authorized Representative: _____

SIGNATURE

DATE

SPECIAL TERMS AND CONDITIONS

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1. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

2. AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Assistance Agreement, plus the following:

- a. Special Terms and Conditions.
- b. Attachments:

Attachment Number	Title
1.	Intellectual Property Provisions
2.	Statement of Project Objectives
3.	Federal Assistance Reporting Checklist and Instructions
4.	Budget Pages (SF 424A)
- c. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>.
- d. Application/proposal as approved by DOE.
- e. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

3. ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by the Department of Energy, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

4. PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

- a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.
- b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disperse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.
- c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income,

rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

- d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

5. CEILING ON ADMINISTRATIVE COSTS

- a. Local government and Non-Profits may not use more than 10 percent of amounts provided under this program (EISA Sec 545 (b)(3)(A)), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA.
- b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

6. LIMITATIONS ON USE OF FUNDS

- a. By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.
- b. Recipients may use not more than 50 percent of the amounts provided for a loan loss reserve to support loans made with private and public funds and to support a sale of loans made by a grantee or third-party lenders into a secondary market.
- c. Local government and Non-Profits may not use more than 20 percent of the amounts provided or \$250,000, whichever is greater (EISA Sec 545 (b)(3)(B)), for the establishment of revolving loan funds.

7. REIMBURSABLE INDIRECT AND FRINGE BENEFIT COSTS

- a. The Recipient is expected to manage their final negotiated project budgets, including their indirect costs and fringe benefit costs. DOE will not amend an award solely to provide additional funds for changes in the indirect and/or fringe benefit costs or for changes in rates used for calculating these costs. DOE recognizes that the inability to obtain full reimbursement for indirect or fringe benefit costs means the Recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the Recipient's cost share.

- b. If actual allowable indirect and/or fringe benefit costs are less than those budgeted and funded under the award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

8. USE OF PROGRAM INCOME

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and used to further eligible project objectives.

9. STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

10. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

11. REPORTING REQUIREMENTS

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.
- b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT"

12. PUBLICATIONS

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: “This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)].”

Disclaimer: “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

13. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

14. INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

- a. The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced in the Agreement Cover Page. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.
- b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator identified and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf)
- c. The IP Service Provider for the Golden Field Office is Julia Moody, who may be reached at julia.moody@go.doe.gov or 303-275-4867

15. LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

16. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project.

If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

You are prohibited from implementing energy efficiency improvements and renewable energy generation opportunities, including demolition, repair, replacement, installation, construction, disposal, or alteration activities until such time that you comply with the Waste Stream and Historic Preservation clauses.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

If you intend to make changes to the scope or objective of your project you are required to contact the DOE Project Officer identified in Block 15 of the Assistance Agreement before proceeding. You must receive notification of approval from the DOE Contracting Officer prior to commencing with work beyond that currently approved.

DOE has made a NEPA determination for this award. All projects under this award are bounded in compliance with the uploaded and signed Statement of Work for expedited NEPA review. The projects within the scope of the Statement of Work comprise of education, technical advice, and actions to conserve. Any projects that fall outside the Statement of Work are conditioned pending further NEPA review. DOE has made a final NEPA Determination for this project, which is categorically excluded from further NEPA review.

17. HISTORIC PRESERVATION

Prior to the expenditure of Project funds to alter any historic structure or site, the Recipient or subrecipient shall ensure that it is compliant with Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties

that are listed in or eligible for listing in the National Register of Historic Places. If applicable, the Recipient or subrecipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO) to coordinate the Section 106 review outlined in 36 CFR Part 800. In the event that a State, State SHPO and DOE enter into a Programmatic Agreement, the terms of that Programmatic Agreement shall apply to all recipient and subrecipient activities within that State. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>. Section 110(k) of the NHPA applies to DOE funded activities.

The Recipient or subrecipient certifies that it will retain sufficient documentation to demonstrate that the Recipient or subrecipient has received required approval(s) from the SHPO or THPO for the Project. Recipients or subrecipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106. The Recipient or subrecipient shall deem compliance with Section 106 of the NHPA complete only after it has received this documentation. The Recipient or subrecipient shall make this documentation available to DOE on DOE's request (for example, during a post-award audit). Recipient will be required to report annually on September 1 the disposition of all historic preservation consultations by category.

18. WASTE STREAM

The Recipient assures that it will create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe the Recipient's or subrecipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. The Recipient shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. The Recipient shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit).

19. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

20. SUBGRANTS, SUBCONTRACTS, AND LOANS

- a. The Recipient hereby warrants that it will ensure that all

activities by sub-grantee(s) and loan recipients are consistent with the approved Statement of Project Objectives.

b. Upon the Recipient's selection of the sub-grantee(s) and loan recipients, the Recipient shall notify (i.e. approval not required) the DOE Project Officer with the following information for each, regardless of dollar amount:

- Name of Sub-Grantee
- DUNS Number
- Award Amount
- Statement of work including applicable activities

c. In addition to the information in paragraph b. above, for each sub-grant and loan that has an estimated cost greater than \$10,000,000, the recipient must submit for approval by the Contracting Officer, a SF424A Budget Information - Nonconstruction Programs, and PMC 123.1 Cost Reasonableness Determination for Financial Assistance (available at <http://www.eere-pmc.energy.gov/forms.aspx>).

21. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS

The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the Recipient under this award pertaining to the programs identified herein. By accepting this award, the Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Recipient also agrees, by its acceptance of this award, to require its sub-recipients to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the sub-recipient.

22. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential

services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages,

employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Reserved

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds

will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

23. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

24. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

*Special Note: Definitization of the Provisions entitled, “REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009” and “REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009” will be done upon definition and review of final activities.

25. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Recipient determines at any time that any construction, alteration, or repair activity on a public building or public works will be performed during the course of the project, the Recipient shall notify the Contracting Officer prior to commencing such work and the following provisions shall apply.

(a) *Definitions.* As used in this award term and condition--

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows: None.

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data*. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

26. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition--

Designated country --

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; or

(4) An Agreement between Canada and the United States of America on Government Procurement country (Canada).

Designated country iron, steel, and/or manufactured goods –

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good –

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.*

(1) The award term and condition described in this section implements-

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of \$7,804,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows: None.

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that--

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including--

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
 - (iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
- (2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).
- (3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data*. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

27. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

28. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at

<http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at *<http://www.whitehouse.gov/omb/circulars/a133/a133.html>*. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

29. DAVIS-BACON ACT AND CONTRACT WORKHOURS AND SAFETY STANDARD ACT

Definitions: For purposes of this provision, “Davis Bacon Act and Contract Work Hours and Safety Standards Act,” the following definitions are applicable:

(1) “Award” means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.

(2) “Contractor” means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients’ or Subrecipients’ contractors, subcontractors, and lower-tier subcontractors. “Contractor” does not mean a unit of State or local government where construction is performed by its own employees.”

(3) “Contract” means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. “Contract” does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) “Contracting Officer” means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) “Recipient” means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(6) “Subaward” means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of “Award” above.

(7) “Subrecipient” means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry;
and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set

aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job

site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than

the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of

each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(c) Recipient Responsibilities for Davis Bacon Act

(1) On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:

- (i) Obtain, maintain, and monitor all Davis Bacon Act (DBA) certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
- (ii) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
- (iii) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (ii) above;
- (iv) Address any Subrecipient and any Contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
- (v) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
- (vi) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
- (vii) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
- (viii) Provide copies of all records upon request by DOE or DOL in a timely manner.

(d) Rates of Wages

The prevailing wage rates determined by the Secretary of Labor can be found at <http://www.wdol.gov/>.

