



**STATE OF WASHINGTON
DEPARTMENT OF COMMERCE**

**REQUEST FOR PROPOSALS (RFP)
RFP NO. EE - 2020**

NOTE: If you download this RFP from the Department of Commerce website, you are responsible for ensuring you are referencing the most current version of the document to meet programmatic requirements. Potential applicants are also responsible for signing up for email updates and checking the website regularly for program updates and application guidance/materials.

FUNDING PROGRAM:

Energy Efficiency Grant
Energy Efficiency and Solar Grants
Program

APPLICATION PERIOD OPEN DATE:

Monday November 9, 2020

APPLICANT'S CONFERENCE DATE:

10:00 AM November 19, 2020

APPLICATION DUE:

January 29, 2021 at 4:00 PM,
Pacific Time, Olympia, WA

ESTIMATED PERFORMANCE PERIOD FOR CONTRACT: 30 months

APPLICANT ELIGIBILITY: State public higher education institutions, local governments, state agencies, kindergarten through 12th grade (K-12) public school districts, and federally recognized tribal governments.

Note: Applicants should refer to this RFP when completing the application and developing projects. The application form itself is not intended to provide sufficient guidance and instruction to apply for this grant. Failure to follow the instructions in this document could result in disqualification.

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SECTION 1. INTRODUCTION

1.1. BACKGROUND AND PROGRAMMATIC GOALS

The Washington State Department of Commerce hereafter called "COMMERCE," is initiating this Request for Proposals (RFP) to solicit applications from eligible entities for the Energy Efficiency and Solar Grants Program: Energy Efficiency Grant to fund energy efficiency retrofits that result in energy and operational cost savings on eligible public buildings.

1.2. MINIMUM QUALIFICATIONS AND PROGRAM PRIORITIES

Applicant requirements:

- Eligible applicants are:
 - local agencies
 - Local agencies includes city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.
 - Public higher education institutions
 - K-12 public school districts
 - State agencies
 - Federally recognized tribal governments
- The primary applicant is an eligible applicant that owns the facility with an eligible project.
- Applicants must be in good standing with all applicable federal, state, and local laws and requirements, including with the Department of Commerce.
- Applicants must be responsive to communications from Commerce. Failure to reply by specified deadlines may result in elimination.
- Applicants may submit unlimited qualifying applications.
- Projects must provide the minimum match required.

Project Requirements:

- The project must be located at an existing facility owned by an eligible applicant and located in Washington State.
- The project must be an improvement to facilities and related projects that result in energy and operational cost savings.
- No more than 50% of energy savings (in BTUs) can come from lighting efficiency projects.
 - PCB lighting projects at schools may be 100% of the energy savings.
- Any commissioning must be combined with a capital retrofit project.
 - No projects can be only commissioning.

- Projects must have a simple pay back of less than 35 years, using statewide average utility rates, applicable statewide average costs, or applicant utility bills (for energy and operational costs not included in the table) (see Table 1: AVERAGE STATE ENERGY RATES)
- Energy savings estimates that are unable to be verified through provided documentation or that are not based on relevant best practices may be disqualified.
- Applicants must apply for available utility incentives.
- The construction phase of the project must be completed within 18 months of execution of the grant agreement, however extensions can be granted on a case by case basis.
- The project must include 1 year of Measurement and Verification.
- The project must not begin (be under construction contract) until Commerce received the signed award letter from the Awardee.
- All aspects of the project must comply with utility, local, state, and federal laws, regulations, and policies, as applicable.

Application requirements:

- Applications must be submitted through the process determined by Commerce.
- Applications must be received by the due date specified by Commerce.
- All application materials must be submitted in the format required by Commerce.
- Answers and attachments must not exceed the length specified in the RFP or in the application instructions.
 - Content that exceeds the length limitations will not be considered.
 - Example: If an application question has a 50 word limit, and 60 words are submitted, only information up to the 50th word will be considered.
 - Example: If an attachment has a maximum length of 2 pages, only the first two pages of content (including images, charts, and any other non-text content) will be considered.
- Applications must include:
 - All materials and information listed in the application instructions
 - A complete and accurate application
 - A completed and signed Certification of Organization Official
 - Sufficient information to verify that the performance calculations are accurate.

Note: These grants are not open to solar photovoltaic systems.

1.3. FUNDING

There is currently \$3,462,900 in funding available from the Energy Efficiency and Solar Grant program: Energy Efficiency Grant as authorized in the Enacted 2020 supplemental budget ESSB 6248 Section 1023. This amount reflects the deduction of the 3% administrative costs as approved by the Office of Financial Management.

Additional funds may be available through other sources including but not limited to:

- State funds available from previous grant rounds
- Federal funds available from previous grant rounds
- Future funding authorized by the legislature

The intent is to award all 2021-2023 funds under this application round, however any leftover funds will be awarded under an additional competitive solicitation. Applicants interested in funding projects for the 2021 – 2023 biennium are strongly encouraged to apply at this time to ensure consideration for future funding.

COMMERCE intends to award as many eligible contracts as funding allows as described in this RFP. The maximum award is \$500,000 per applicant. There is no minimum award amount.

Funds that are from a federal source will have additional requirements.

Applications exceeding the maximum allowable award will be considered non-responsive and will not be evaluated.

Any contract awarded as a result of this competitive process is contingent upon no successful process protests.

This funding cannot supplant or replace funds already committed to the project. Commerce will not fund projects beyond 100%.

1.4. MINIMUM MATCH REQUIREMENTS:

Projects located in Small Cities and Towns, 33% of the total project cost (leverage ratio of 1:2)

All others, 50% of the total project cost (leverage ratio of 1:1)

1.5. PERIOD OF PERFORMANCE

The period of performance of any successful applicant project resulting from this RFP is expected to be completed within 30 months of receipt of the contingent award letter. Amendments extending the period of performance, if any, shall be at the sole discretion of the COMMERCE.

The period of performance includes up to 18 months for construction and a minimum of 12 months Measurement and Verification.

During construction, grantees will be required to submit quarterly reports.

Projects that receive federal funding will also be required to show compliance with Buy American and Davis Bacon requirements during the construction phase of the project.

During Measurement and Verification, no quarterly reports are required.

1.6. CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former Washington State Department of Commerce employees pursuant to chapter 42.52 of the Revised Code of Washington. Proposers should familiarize themselves with the requirements prior to submitting a proposal that includes current or former Department of Commerce employees.

1.7. DEFINITIONS

Definitions for the purposes of this RFP include:

Apparent Successful Applicant: The Applicant selected as the entity to receive funding for the proposed projects, subject to completion of contract negotiations and execution of a written contract.

Application: A formal proposed project submitted in response to this solicitation.
Applicant: Individual or company that submits a proposal in order to attain a contract with COMMERCE.

COMMERCE or AGENCY: The Department of Commerce is the agency of the state of Washington that is issuing this RFP.

Energy and Operational Cost Savings: The savings achieved by reducing the costs of resources consumed on site, including but not limited to electricity, propane, natural gas, and water. Maintenance and capital expense reductions are not included for the purposes of this grant.

Grantee: Individual or company whose proposal has been accepted by COMMERCE and is awarded a fully executed, written contract.

Contractor: Any non-state entity hired by the applicant or grantee to perform work on the proposed project, including but not limited to energy audits, engineering, project management, construction, installation, or demolition.

Request for Proposals (RFP): Formal competitive process document in which a funded program is identified but no specific projects have been identified. The purpose of an RFP is to permit interested entities an opportunity to promote their organization and present the best possible projects meeting the intent of the program.

Simple Pay Back: The total project cost divided by the annual energy and operational cost savings.

Total Cost: The total cost of the project including but not limited to labor, project management, materials, sales tax, etc. For DES ESCO projects use the guaranteed maximum. Energy audits will be considered a project cost if they are included in the scope and budget submitted and will not be billed to the grantee prior to the award of a grant.

1.8. ADA

COMMERCE complies with the Americans with Disabilities Act (ADA). Applicants may request documents in an alternate format or for ADA accommodation by contacting the RFP coordinator.

SECTION 2. GENERAL INFORMATION FOR APPLICANTS

2.1. RFP COORDINATOR

The RFP Coordinator is the sole point of contact in COMMERCE for this procurement. All communication between the Applicant and COMMERCE upon release of this RFP shall be with the RFP Coordinator, as follows:

Name	Dever Haffner-Ratliffe
Program E-Mail Address	EEandS@commerce.wa.gov
Program Website	https://www.commerce.wa.gov/growing-the-economy/energy/energy-efficiency/

Any other communication will be considered unofficial and non-binding on COMMERCE. Applicants are to rely on written statements issued by the RFP Coordinator. *Communication directed to parties other than the RFP Coordinator may result in disqualification of the Applicant.*

2.2. ESTIMATED SCHEDULE OF ACTIVITIES

Issue Request for Proposals (RFPs)	11/9/2020
Question & answer period	11/9/2020 – 1/15/2021
Answers to Q&A posted	Minimum of every two weeks
Applicants Conference	10:00 AM 11/19/2020
Technical Session (Audit Template)	1:30 PM 12/3/2020
Audit Template available	12/3/2020
Applications due	4:00 PM 1/29/2021
Application Scoring	January – April 2021
Notify applicants about awards	4/30/2021
Hold debriefing conferences (if requested)	May 2021 – Completion
Negotiate and execute contracts	May 2021 – Completion
Begin contract development	After 4/30/2021

COMMERCE reserves the right to revise the above schedule for any reason. Any changes will be published on the website and announced through the EE&S GovDelivery.

Applicants are encouraged to sign up for updates (the GovDelivery) here: https://public.govdelivery.com/accounts/WADOC/subscriber/new?topic_id=WADOC_130

2.3. APPLICANT'S CONFERENCE AND TECHNICAL SESSION

Applicant's Conference

A pre-proposal Applicant's conference webinar is scheduled to be held on November 19, 2020 at 10:00 a.m. Pacific Time via webinar. All prospective Applicants are encouraged attend; however, attendance is not mandatory. The webinar will be recorded and posted on the program webpage. To join the webinar:

Join online:

<https://wastatecommerce.zoom.us/j/83126356876?pwd=UXRwSWxNbE9sV1U0c1hkN2J5Q1J0QT09>

Join by phone:

Number: (253) 215-8782
Meeting ID: 831 2635 6876
Passcode: 989396

Technical Session – Audit Template

A technical session will be held to review the Building Energy Asser Score Audit Template (Audit Template) on December 3, 2020 at 1:30 p.m. Pacific Time via webinar. All prospective Applicants are encouraged attend; however, attendance is not mandatory. The webinar will be recorded and posted on the program webpage. To join the webinar:

Join online:

<https://wastatecommerce.zoom.us/j/84097649751?pwd=VEJ3b2NXV2FsUVU0bnNyRjg4TENCd09>

Join by phone:

Number: (253) 215-8782
Meeting ID: 840 9764 9751
Passcode: 617782

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the applicant's conference or in subsequent communication with the RFP Coordinator will be documented and answered in written form. A copy of the questions and answers will be posted on the program webpage.

2.4. QUESTIONS AND ANSWERS

Applicants may only submit process related questions in writing to EEandS@commerce.wa.gov. All questions and responses will be posted on the program webpage a minimum of every two weeks. Questions must be received by 5:00 PM January 15, 2021. The final questions and Answers will be posted on January 22, 2021.

2.5. SUBMISSION OF APPLICATION

Applications must be submitted electronically through Zoom Grants.

Only electronic applications will be accepted. The proposal must be received by the through Zoom Grants and by the RFP coordinator no later than 4:00 PM Pacific Time, in Olympia, Washington, on January 29, 2021.

E-mail and e-mail attachment shall not be accepted, unless the attachment is too large for the Zoom Grants system (See instructions in Section 3.1 on how to communicate this to COMMERCE).

Zipped files cannot be received by COMMERCE and cannot be used for submission of applications. Application materials attached as zip files will be disqualified.

Forms requiring signature must be signed by an individual within the organization authorized to bind the Applicant to the offer. Only scanned color original signed documents will be accepted. Commerce does not accept digital signatures as original signatures.

COMMERCE does not assume responsibility for problems with Applicant's submissions. If Zoom Grants is not working, appropriate allowances will be made.

Applications may not be transmitted using facsimile transmission. Hard copies will not be accepted.

Applicants should allow sufficient time to ensure timely receipt of the proposal by the RFP Coordinator. Do not wait until the last minute to submit the application. Late applications will not be accepted and will be automatically disqualified from further consideration, unless Zoom Grants is found to be at fault at COMMERCE'S sole determination. All applications and any accompanying documentation become the property of COMMERCE and will not be returned.

Application link: <https://zoomgrants.com/gprop.asp?donorid=2337&limited=3152>

2.6. PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

Applications submitted in response to this competitive procurement shall become the property of COMMERCE. All applications received shall remain confidential until the Apparent Successful Awardee is announced; thereafter, the applications shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Applicant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the

particular exemption from disclosure upon which the Applicant is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Applicant has marked as "Proprietary Information," COMMERCE will notify the Applicant of the request and of the date that the records will be released to the requester unless the Applicant obtains a court order enjoining that disclosure. If the Applicant fails to obtain the court order enjoining disclosure, COMMERCE will release the requested information on the date specified. If an Applicant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, COMMERCE shall maintain the confidentiality of the Applicant's information per the court order.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

2.7. REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, the revised version and current date of publishing will be posted on the Commerce website under the applicable funding program web page. The applicant is responsible for checking the program webpage for updates and requirements.

COMMERCE also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

2.8. COMPLAINT PROCESS

Applicants may submit a complaint to COMMERCE based on any of following:

- The solicitation unnecessarily restricts competition;
- The solicitation evaluation or scoring process is unfair; or
- The solicitation requirements are inadequate or insufficient to prepare a response.

A complaint may be submitted to COMMERCE at any time prior to 5 days before the bid response deadline. The complaint must meet the following requirements:

- The complaint must be in writing;
- The complaint must be sent to the RFP coordinator in a timely manner;
- The complaint should clearly articulate the basis for the complaint; and
- The complaint should include a proposed remedy.

The RFP coordinator will respond to the complaint in writing. The response to the complaint and any changes to the solicitation will be posted on the Commerce

website on the appropriate funding program page. The complaint may not be raised again during the protest period. COMMERCE'S action or inaction in response to the complaint will be final. There will be no appeal process.

2.9. RESPONSIVENESS

All applications will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Applicant is specifically notified that failure to comply with any part of the RFP may result in rejection and disqualification of the application.

COMMERCE also reserves the right at its sole discretion to waive minor administrative irregularities.

2.10. AWARD REQUIREMENTS

COMMERCE reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Applicant can propose. There will be no best and final offer procedure. COMMERCE reserves the right to contact Applicant for clarification of its proposal.

The Apparent Successful Grantee should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some, or all, of the Applicant's proposal. It is understood that the application will become a part of the official procurement file on this matter without obligation to COMMERCE.

Recipients of funding will be expected to report to Commerce no less than quarterly regarding progress of the funded project. A final Fact Sheet summarizing project successes, lessons learned, and other information requested by Commerce will be required prior to processing the final invoice. Information deemed proprietary may be viewed, but not downloaded, via Skype or Google docs to demonstrate milestone completion.

All Apparent Successful Grantees will be required to adhere to all state laws and requirements pertaining to capital funding, including but not limited to, compliance with [Executive Order 05-05](#), including review by the Department of Archeology and Historic Preservation, and tribal contact, as well as ensure Washington State Prevailing Wages are paid and requirements met.

Awards from Federal Money:

In addition, for funds awarded from federal sources (ARRA), the following federal requirements will apply to your project. If the requirements are contradictory to the state requirements, the most stringent requirements apply. It is the applicant's responsibility to ensure understanding and compliance, with all utility, local, state and federal requirements. It is the applicant's responsibility to ensure

that all subcontractors and consultants understand and comply with all requirements including, but not limited to:

- Active Registration through SAM.gov
 - Information: <https://sam.gov/SAM/>
- Buy American Provisions of the Recovery Act
 - Information: <https://www.energy.gov/eere/funding/legacy-guidance-buy-american-provision-recovery-act#:~:text=The%20Buy%20American%20provision%20in,could%20be%20used%20for%20a>
- Presidential Executive Order on Buy American and Hire American
 - Information: <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-buy-american-hire-american/>
- Davis-Bacon and Related Acts
 - Information: <https://www.dol.gov/agencies/whd/government-contracts/construction>
 - This includes but is not limited to employee interviews, certified payroll records, and paying federal Davis Bacon wages.
- Historic Preservation
 - Information: <https://www.nps.gov/subjects/historicpreservation/laws.htm>
- National Environmental Policy Act
 - Information: <https://www.epa.gov/nepa>

Any changes to the project from the original application must be reviewed and approved by Commerce. Changes to the project (including but not limited to scope, budget, and energy savings projects) may result in loss of grant funds.

2.11. CONTRACT TERMS AND CONDITIONS

The apparent successful applicants will enter into a contract for the awarded funds. To enter into a contract, the grantee will be required to provide additional documentation and information to verify compliance with the terms of this RFP. A full list of required documents and information will be provided to successful applicants.

The scope of work and the budget within the contract will be based on the application documents. Any changes to the scope of work or budget will require review and approval by Commerce. Commerce reserves the right to reduce the grant award amount based on project changes, up to and including withdrawal of the award.

The standard contract is substantially the same as the sample contract and its general terms and conditions. In no event is an Applicant to submit its own standard contract terms and conditions in response to this competitive process. See Exhibit C – Standard Terms and Condition for the sample contract terms.

Grantees that are awarded Federal Funds will also enter into a contract that includes the Federal Terms and Conditions. See Exhibit D – Federal Funds Standard Terms and Conditions for sample federally funded contract terms, which are in addition to the other contract terms.

Alternative contract terms and language is available for specific sections and situations (such as for Tribal governments or other state agencies). Some terms and conditions can be negotiated during contract development.

Grantees should allow a minimum of three months for the contract to be fully executed, however additional time may be required. Additional information about the requirements and timeline to contract will be provided to the apparent successful applicants at the time of award.

2.12. COSTS TO PROPOSE

COMMERCE will not be liable for any costs incurred by the Applicant in preparation of a proposal submitted in response to this RFP, travel to or conduct of a presentation, or any other activities related to responding to this RFP.

2.13. NO OBLIGATION TO CONTRACT

This RFP does not obligate the state of Washington or COMMERCE to contract for services specified herein.

2.14. REJECTION OF APPLICATIONS

COMMERCE reserves the right at its sole discretion to reject any and all applications received without penalty and not to issue a contract as a result of this RFP.

2.15. COMMITMENT OF FUNDS

The Director of COMMERCE or delegate is the only individual who may legally commit COMMERCE to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before acceptance of the award.

2.16. PAYMENT

This grant will utilize electronic payment in its transactions. The successful Grantee will be provided a form to complete with the contract to authorize such payment method.

There are two payment schedules available. Grantees may choose between a milestone based payment schedules or a reimbursement based payment schedule, depending on the structure of the project. Commerce reserves the right to require either payment option, based on risk and administrative burden.

No funds will be issued in advance of completion of work. The grantee is responsible for submitting invoices to Commerce to initiate payment. No funds will be issued without a properly completed invoice.

2.17. INSURANCE COVERAGE

The Grantee is to furnish COMMERCE, upon request, with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth within the contract.

The Grantee shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Grantee shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to COMMERCE within fifteen (15) days of the initial request. Standard insurance requirements are included within the sample contract and its special terms and conditions attached as Exhibit C.

SECTION 3. APPLICATION CONTENTS

3.1. OVERVIEW

No hard copies will be accepted.

See Exhibit B – Instructions for the Energy Efficiency Grant 2020 Application for additional instructions and the instructions provided in the application system. Such instructions are considered part of the RFP and failure to follow them may lead to disqualification.

Applications must be written in English and submitted electronically through the provided link with all attachments appropriately named and included. Any required document (see Exhibit B – Instructions for the Energy Efficiency Grant 2020 Application for the list), in addition to the application, that is not included on the application submission may result in application disqualification.

All application questions must be completed. Questions will be identified as follows:

- Information – which will not impact qualification or score.
- Qualification – responses will be used to ensure they meet the required qualification. Failure to meet the qualification may result in disqualification.
- Scored – responses will be used to calculate the score.
- Award – responses will be used to calculate and make awards.

If any attachments are too large to include with the ZoomGrants application then the applicant must:

- Upload a document in place of the attachment stating the issue and that the document will be emailed and from whom the email will come.
- Email the required document to EEandS@commerce.wa.gov
 - By the specified application deadline
 - Subject line: EE Application, <Name of the Applicant, <Name of the Project>, <Document Name>
 - Example: EE Application, City of Commerce, Window Replacement Building E, Energy Services Proposal

The application must be submitted by the entity for which a contract would be negotiated should the project be contingently awarded. Applications submitted by a third party, or on behalf of the applicant, will NOT be accepted.

Apply here: <https://zoomgrants.com/gprop.asp?donorid=2337&limited=3152>

Applicants are encouraged to save their application frequently, and apply early. The system can take several minutes to process application submissions, so be sure to allow time for the submission to process before the deadline. The application will identify if a question is for informational purposes, if it pertains to a program requirement, or if the question will be used for scoring.

Applicants must answer all required questions in the application, and provide all required documentation. Questions about the application and required materials can be submitted through the questions and answers process (see section 2.4. Questions and Answers).

3.2. ADMINISTRATIVE REVIEW (NOT SCORED)

All applications will undergo administrative review to ensure that the Program Specific Criteria were met. Applications that fail to meet the Program Specific Criteria will be disqualified from further consideration.

Required documents:

- If not through DES, submit qualifications that were used to select the licensed engineer/ certified energy manager
- Audit Template (PDFs of each building audit created using Building Energy Asset Score) (see Section 3.3 TECHNICAL REVIEW for requirements)
- Energy Service Proposal or Scope of Work (see Section 3.3 TECHNICAL REVIEW for requirements)
- Certification of Organization Official (See Exhibit A - Certifications for form, also available in the application portal).
- Supplemental list of Building IDs

Program Specific Criteria

Applications will be screened to ensure the following requirements are met. Applications not meeting these requirements may be disqualified from further review at any time in the review process.

- The applicant is an eligible entity:
 - Local Agencies
 - Local Agencies includes city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.
 - Public Higher Education Institutions
 - K-12 Public School Districts
 - State Agencies
 - Federally Recognized Tribal Governments
- The eligible applicant owns the facility at which the project will occur.
- The project must be a retrofit at an existing facility, new construction is not eligible.
- Applicants must be in good standing with all applicable federal, state, and local laws and requirements, including with the Department of Commerce.
- The project must be an improvement to facilities and related projects that result in energy and operational cost savings.
- No more than 50% of energy savings (BTUs) can come from lighting retrofits savings.

- PCB lighting projects at schools may be 100% of the energy savings.
- The construction phase of the project must be completed within 18 months of execution of the grant agreement, however extensions can be granted on a case by case basis.
- The project must not begin (be under construction contract) until the date that the grant award is accepted.
- All aspects of the project must comply with utility, local, state, and federal laws, regulations, and policies, as applicable.
- Applications must be submitted through the process determined by Commerce.
- Applications must be received by the due date specified by Commerce.
- All application materials must be submitted in the format required by Commerce.
- All required materials must be received by Commerce by the deadline.
- All energy savings assumptions are clearly stated, documented, and based on recognized industry practices.
- Any parties hired to perform work on the project (including but not limited to design, energy audits, consultants, and entities that will be performing construction) were hired in accordance with Washington State Public Contracting Laws, including through the Department of Enterprise Services Energy Services Performance Contracting Program.
- The energy savings of the project must pay for the total cost of the project within 35 years.

3.3. TECHNICAL REVIEW (NOT SCORED)

Technical experts will review application materials to ensure that the scope of work will achieve energy and cost savings, that energy savings are accurate (which is used for simple pay back), and to confirm that the application meets the Program Specific Criteria. Applications that fail to meet the Program Specific Criteria, that fail to sufficiently provide documentation justifying the estimated energy savings, or fail to provide the required documentation or information will be disqualified from further consideration.

An energy audit of each facility in the project is required. The Energy Audit must have been completed or updated no earlier than January 2019. The audit information must be used to complete the Audit Template. The audit must either be:

- In compliance with the ESPC guidelines, if working through the DES ESPC program:
<https://des.wa.gov/sites/default/files/public/documents/Facilities/Energy/ESPC-Guidelines.pdf>
- If not working through DES, energy audit conducted in compliance with ASHRAE Standard 211 Standard for Commercial Building Energy Audits - 2018.

Documents required to be submitted:

Building Energy Asser Score Audit Template (Audit Template) (required submission): All projects must be documented using the Building Energy Score Audit Template. This template will be available on December 3rd and posted on the webpage, shared during the technical session, and sent through the EE&S GovDelivery.

- This report shall be used to document the building energy audit, baseline energy use and the energy savings opportunities.
- An audit form must be completed for each building in the project. Give each buildings a unique name with a maximum of 10 characters.
- Complete the report type “WA Commerce Grants”.
- All mandatory fields required for the “WA Commerce Grants” report must be completed.
- Use optional audit fields to provide more detail about the baseline building condition. These should be completed for all elements of the buildings that will be impacted by the energy savings opportunities proposed for this project. For example, if the energy efficiency improvement project proposes changes to the mechanical system, the audit of the base case mechanical system should be documented. Other optional sections of the audit may be omitted or included.
- Populate the base case energy use fields required by the audit form. This should include at least one year of energy consumption data.
- 1 year of consecutive data must begin no earlier than January 1, 2019.
- Complete each field required to document the energy savings opportunities, cost and benefits.
- Use actual site energy cost based on local utility rates or energy delivery charges.
- *Commerce will be converting energy savings reported to average state energy rates. This will be used for scoring and to determine if the project will have a simple payback less than 35 years. See Table 1: AVERAGE STATE ENERGY RATES for rates.*

Proposed Scope of work or Energy Services Proposal as follows:

- Narrative that describes the base case building condition and the proposed energy savings opportunities. Support all energy savings opportunities reported in the audit template.
- Include in the narrative the methods used to estimate energy savings for each energy efficiency measure. Include accounting for efficiency measure energy interaction effects.
- If baseline energy use is estimated rather than measured, include a description of the methodology used to develop the baseline energy use estimate.

- Include in the narrative any actions taken to assure the estimated energy savings will be realized, including measurement and verification, extended service contracts, building operator training and energy savings guarantees.
- Include in the narrative the method used to estimate the cost of energy efficiency measures.
- This should be consistent with an investment grade audit as required by DES or a level 3 audit as described in ASHRAE standard 211.
- Total estimated costs of implementing the project
- Identify lighting savings separately
- A measurement and verification plan for a minimum of 1 year following completion of the project.

Table 1: AVERAGE STATE ENERGY RATES

Commerce will be converting energy savings reported to average state energy rates. This will be used for scoring and to determine if the project will have a simple payback less than 35 years.

Resource	Average Cost	Unit
Electricity	\$0.08275	kWh
Natural Gas	\$0.75	therm
Propane	\$1.16	Gal.
Heating Oil	\$1.54	Gal.
Other Utilities	Provide utility bill that shows rates and units	
Water	Provide utility bill that shows rates and units	

Source:

Electric and Natural Gas – U.S. Energy Information Administration

Propane and Heating Oil – Washington State Department of Enterprise Services Contracts

3.4. PROJECT BUDGET

The maximum grant amount requested must not exceed \$500,000. If an applicant submits multiple applications that total over \$500,000 Commerce will evaluate each application individually. If the a single applicant has multiple Apparent Successful applications that total over \$500,000, Commerce will reach out to the Apparent Successful Applicant to determine funding and award preferences.

Minimum Match Requirements (Not scored)

Applicants must provide minimum match as follows:

- Projects located in Small Cities and Towns, 33% of the total project cost (leverage ratio of 1:2)
- All others, 50% of the total project cost (leverage ratio of 1:1)

While match can be from any source (private grants, organization budget, etc.) only non-state funding will be scored as explained in the next section.

Non-State Funding Leverage Ratio (Scored)

The ratio of non-state funds to funds provided by this contract will be scored up to 30 points. Ratios will be calculated by dividing the non-state funds by the grant funds requested. Scores will then be assigned based on a goal ratio of 3 to 1 (75% of the project funded by non-state funds).

Loans through the Washington State Treasurer are not considered state funds and are factored in when calculating the Non-State Funding Leverage Ratio.

SECTION 4. EVALUATION AND FUNDING OUTCOMES

4.1. EVALUATION PROCEDURE

Responsive applications will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of applications shall be accomplished by an evaluation team(s), to be designated by COMMERCE, which will determine the ranking of the applications.

The RFP Coordinator may contact the Applicant for clarification of any portion of the Applicant's proposal or for additional documentation.

4.2. EVALUATION BREAKDOWN

The following maximum score will be assigned to the proposal for evaluation purposes:

Simple Payback – 30 points

Factors:

- Annual Energy Savings
- Total Cost of the Project

Note: This will be evaluated using state-wide average costs as outlined in Table 1: AVERAGE STATE ENERGY RATES or applicable utility bills for energy and operational costs without rates provided.

Non-State Funding Leverage Ratio – 30 points

Factors:

- Total Project Cost
- Non-State Funding
- Energy Efficiency Grant Amount Requested

New Grantee – 10 Points

Factors:

- Whether the applicant has received funds from the Energy Efficiency and Solar – Energy Efficiency Grant in the past

PCB Lighting for Schools – 10 Points

Factors:

- The amount of PCB lighting being removed as part of the project

Note: Open only to k-12 school districts

Projects in small towns and cities will be given first awards, up to 20% of the total awardable funds, as required by the proviso language. To qualify, the project must be located within a city or town with a population of 5,000 or less. Commerce will use the Office of Financial Management official population estimates as published on April 1, 2021 to determine population eligibility. Grantees who believe the location of the project qualifies but is not included on this list may provide

explanation in the narrative of the project. For more information on the official population estimates: <https://www.ofm.wa.gov/washington-data-research/population-demographics/population-estimates/april-1-official-population-estimates>

COMMERCE reserves the right to award the contract to the Applicant whose proposal is deemed to be in the best interest of COMMERCE and the state of Washington.

To calculate funding awards, Commerce will use which ever amount is higher between the total incentives and rebates or the funding provided by the applicant. If post-completion incentives or rebates exceed the amount of funding provided at a cost to the awardee, Commerce will adjust the award to ensure the project is not funded beyond 100%. Incentives and rebates will not be considered match funds.

4.3. ADDITIONAL INFORMATION MAY BE REQUIRED

After evaluating the written applications COMMERCE may elect to pose follow-up questions to the Applicant. Should clarification become necessary, COMMERCE will contact the Applicant(s) with any questions concerning the application.

Commerce reserves the right to request additional documentation at any time. Failure to respond by the deadline specified in such requests may result in disqualification.

4.4. GRANTEE NOTIFICATIONS TO APPLICANTS

COMMERCE will notify the Apparently Successful Applicant of their selection in writing (letter via email attachment) upon completion of the evaluation process.

Applications not selected for further negotiation or award will be notified by e-mail.

4.5. DEBRIEFING OF UNSUCCESSFUL APPLICANTS

Any Applicant who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator at EEandS@commerce.wa.gov within three (3) business days after the Unsuccessful Applicant Notification is e-mailed to the Applicant. Debriefing requests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington, on the third business day following the transmittal

of the Unsuccessful Applicant Notification. The debriefing must be scheduled within three (3) business days of the request.

Discussion at the debriefing conference will be limited to the following:

- Evaluation and scoring of the firm's proposal;
- Critique of the proposal based on the evaluation;
- Review of applicant's final score in comparison with other final scores *without* identifying the other firms or reviewing their applications.

Comparisons between applications or evaluations of the other applications will not be allowed. Debriefing conferences may be conducted via a conference call (web link and call in available) and will be scheduled for a maximum of 30 minutes.

4.6. PROTEST PROCEDURE

Protests may be made only by Applicants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Applicant is allowed five (5) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the fifth business day following the debriefing. Protests must be submitted by e-mail as a written request signed by an authorized application representative.

Applicants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Applicants under this procurement.

All protests must be in writing (a signed letter as an email attachment), addressed to the RFP Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFP number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of an evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or COMMERCE policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's

professional judgment on the quality of a proposal, or 2) COMMERCE'S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by COMMERCE. The COMMERCE Director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Applicant that also submitted a proposal, such Applicant will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE'S action; or
- Find only technical or harmless errors in COMMERCE'S acquisition process and determine COMMERCE to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide COMMERCE options which may include:
 - Correct the errors and re-evaluate all applications, and/or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If COMMERCE determines that the protest is without merit, COMMERCE will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

EXHIBIT A - CERTIFICATIONS

 <p>Department of Commerce</p>	<p>Efficiency and Solar Grants Program Energy Efficiency Grant Certifications and Assurances</p>
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Organization	
Project Title	
Project Budget	\$

ORGANIZATION OFFICIAL CERTIFICATION

I certify, on behalf of (Organization name) that (Organization name) will adhere to all Federal, State and local laws and regulations that are applicable to the <Funding Source and Funding Program Name>, the operations of (Organization name), and the scope of the proposed project.

(Organization Name) has all necessary, current business licenses and regulatory approvals required in the state of Washington, including but not limited to current registration status with the Secretary of State and Department of Revenue.

The project proposed in this application could not go forward at the scale or on the schedule proposed without the requested funding. (Organization name) will use any funds received under this request, to supplement, not to supplant, other funds.

Documentation is on file for the funding as provided in the application budget and such documentation will be provided to Commerce upon request.

(Organization Name) certifies that any and all other state funds included have been disclosed in the application budget section.

Pursuant to Chapter 42.52 RCW, the Ethics in Public Service Act, any current (or within the past 24 months) employees or governing board members who are, who have been employed by the Washington State Department of Commerce, must be disclosed to the program manager.

If a determination is made that a conflict of interest exists, or that requested information was withheld, I understand my organization may be disqualified for further consideration for award of funding and/or from the opportunity to contract for these funds

On behalf of <<Organization Name>>, I certify that this organization complies with 42.52 RCW, the Ethics in Public Service Act.

Signature	Date
Print Name	Title

EXHIBIT B – INSTRUCTIONS FOR THE ENERGY EFFICIENCY GRANT 2020 APPLICATION

READ THE REQUEST FOR PROPOSAL (RFP) before you begin the Energy Efficiency Grant 2020 application.

Complete the Energy Efficiency Grant 2020 application on ZoomGrants, answer all questions in their entirety, and upload all required documents. In ZoomGrants, the application is broken down into four tabs: project information, application questions, budget, and documents. Questions regarding the application process may be emailed to eeands@commerce.wa.gov.

Deadline:

Applications must be received by 4:00 PM (PST) on Friday, January 29, 2021. Submit the application early to ensure it is processed by the deadline.

Common Field Text for both Zoom Grants and the Building Energy Asset Score Audit Template (*Audit Template*).

Commerce will be combining data we collect from the Zoom Grants application and the *Audit Template* Reports. To do this it is important to match a number of fields. Enter the same text in both the Zoom Grants and *Audit Template* for the following fields:

***Audit Template* Screen 1: Building Information**

<i>Zoom Grants</i>	<i>Audit Template</i>
Question #19- Building Name (limited to 10 characters)	Building Name (limit to 10 characters)
Question under Project Information Tab- Project Name	Project Name

***Audit Template* Screen 2: Contact Information and Audit Details**

<i>Zoom Grants</i>	<i>Audit Template</i>
Question #8- Energy Consultant (Auditor)	Auditor - Company Name or Organization
Question # 5- Project Manager	Building Owner - Name
Question under Project Information Tab- Applicant Organization	Building Owner – Company Name or Organization

Project Information:

1. **Project Name** – Also enter the project name in Screen 1 of the *Audit Template*, Building Information: “ Project Name”.
2. **Application Information-** The information entered here will be the authorized representative of the applicant organization completing the application and the contact person for any follow-up questions regarding the application. This must be an employee, not a third party.

3. **Application Organization-** Also enter the project organization name in Screen 2 of the *Audit Template*, Contact Information and Audit Details: “Building Owner – Company Name or Organization”.

Application Questions:

1. **Question 5. Organization's Project Manager Name (Last, First) (Information)-** Also enter the project manager name in Screen 2 of the *Audit Template*, Contact Information and Audit Details: “Building Owner – Name”. This is the applicant’s internal project manager.
2. **Question 8. Energy Consultant (Auditor) Company Name (information)-** Also enter the project manager name in Screen 2 of the *Audit Template*, Contact Information and Audit Details: “Auditor - Company Name or Organization”.
3. **Question 19. Building Name(s) (information) -** Each property will have its own *Audit Template*. There is a 10 character limit for each building name. Enter the building name included in this project as it appears on Screen 2 in each *Audit Template*, Building Information: Building Name. Enter N/A for blank fields. If there are more than 10 building names, please attached a supplemental list in the document section.
4. **Question 21. Does this project include PCB lighting at at k-12 schools (Scored)?-** This is a branching question. If you answer “No”, question 22 will be hidden. If you answer “Yes”, question 22 will be shown.

Budget

Applicant State Funds: Funds provided by the applicant from state sources.

Applicant Non-state Funds: Funds provided by the applicant from non-state sources.

Washington State Treasurer Loans (Not considered State Funds): Funds provided from the Washington State Treasurer that the applicant will repay.

Non-State Private Loans: Funds to be provided from non-state sources that the applicant will repay.

State Loans: Funds provided from state sources that applicant will repay.

Other State Funds: Funds from state sources provided by an entity other than the grantee that do not need to be repaid.

Other Non-State Funds: Funds from non-state sources provided by an entity other than the grantee that do not need to be repaid.

Energy Efficiency Grant Request: The amount of funding requested through this grant.

Documents

Applicants are able to send a link to an external user to upload documents to their application without needing to be logged in. The link is located in the Documents tab of the application, under the document that is being request. That link is unique to the application and the document being requested. The external user will follow the link, complete three steps, and hit the upload button.

If any attachments are too large to include with the ZoomGrants application then the applicant must:

- Upload a document in place of the attachment stating the issue and that the document will be emailed and from whom the email will come.

- Email the required document to EEandS@commerce.wa.gov
 - By the specified application deadline
 - Subject line: EE Application, <Name of the Applicant, <Name of the Project>, <Document Name>
 - Example: EE Application, City of Commerce, Window Replacement Building E, Energy Services Proposal

Documents requested:

If not through DES, submit qualifications that were used to select the licensed engineer/ certified energy manager- Required for projects not working with DES.

Audit Template (multiple Audit Templates must be saved and uploaded as one document) This is a required document. Applicants must complete an *Audit Template* for each building included in the scope of the project. There may be more than one *Audit Template*. If so, they must be combined and saved as one PDF document and uploaded. To complete the *Audit Template*, go to this website: <https://buildingenergyscore.energy.gov/>. See *Audit Template* Instructions included in the RFP documents for more detail on completing and submitting *Audit Template(s)*.

Energy Service Proposal or Scope of Work- This is a required document. Content of the Energy Service Proposal or Scope of Work can be found in the RFP.

Certification of Organization Official- This is a required document. A template can be found in the RFP, on the EE Grant webpage (<https://www.commerce.wa.gov/growing-the-economy/energy/energy-efficiency/>), or in ZoomGrants.

Supplemental list of Building IDs- Upload a list of building IDs if there are more than 10. List building name as it appears on each energy *Audit Template* included in this project. Each building will have its own audit form. There is a 10 character limit for building name.

Utility Bills (only if no rate listed in RFP Table 1) - Required for projects claiming energy or operational savings without a state wide rate listed in Table 1: AVERAGE STATE ENERGY RATES.

EXHIBIT C – STANDARD TERMS AND CONDITIONS

PROGRAM SPECIFIC TERMS AND CONDITIONS GOVERNING THIS GRANT

As identified herein, notwithstanding General Terms and Conditions Sections, the following Program Specific Terms and Conditions take precedence over any similarly referenced Special or General Terms and Conditions:

1.1. COPYRIGHT (REPLACES GENERAL TERMS AND CONDITIONS 3.6)

For Materials (including Reports and Documents) that are delivered under the Contract, but that incorporate pre-existing materials or are required for the completion of the Scope of Work or are produced for reporting and compliance purposes, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document, which was not produced in the performance of this Contract. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

1.2. SUBCONTRACTING (REPLACES GENERAL TERMS AND CONDITIONS 3.15)

The Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

1.3. TREATMENT OF ASSETS (REPLACES GENERAL TERMS SECTION 3.20)

The parties do not anticipate that Commerce will furnish property (other than the state funds granted herein) to Grantee for use in Grantee's performance under this Contract; provided, however, that title to any other property that may be so furnished by Commerce shall remain in Commerce. Commerce claims no ownership for the materials, goods, or services purchased by the Grantee for the completion of this Contract, regardless of reimbursement status under this contract.

- A. Any property of Commerce furnished to the Grantee shall, unless otherwise provided herein or approved by Commerce, be used only for the performance of this contract.
- B. The Grantee shall be responsible for any loss or damage to property of Commerce that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any Commerce property is lost, destroyed or damaged, the Grantee shall immediately notify Commerce and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to Commerce all property of Commerce prior to settlement upon completion, termination or cancellation of this contract
All reference to the Grantee under this clause shall also include Grantee's employees, agents or subcontractors.

1.4. USE OF STATE CAPITAL FUNDS

This grant is made with State Capital Funds. As such, the Grantee agrees to follow and to ensure that all subcontractors follow the requirements associated with state capital dollars, including but not limited to:

- A. Washington State Prevailing Wage
- B. Washington State Public Works requirements
- C. State Cultural and Historic Resource requirements and Tribal consultation as required by Governor's Executive Order 05-05
- D. Comply with Washington State Environmental Policy Act (SEPA)
- E. Report on all pass-through funding using the provided reportable expense template under the Governor's Diverse Spend Initiative

1.5. 2020 ENERGY EFFICIENCY GRANT REQUIREMENTS

Grantee agrees to comply with the requirements and follow the guidelines as outlined in the Request for Proposal dated November 2020 (the "RFP"), incorporated by this reference as if fully set forth herein. In the event of conflict between the RFP and the contract, the Contract prevails.

1.6. REPORTING REQUIREMENTS

During the construction phase of the Scope of Work, the Grantee must provide quarterly written reports and host a quarterly phone meeting with Commerce for

project update purposes. Phone contact should cover current status of the project and any barriers that are potentially affecting the project schedule.

The Grantee shall provide a report to Commerce quarterly. Quarterly reports are due no later than 15 days after the end of each quarter or at the time of invoice for the quarter to be reported. The report form will be provided by Commerce. The intent is to collect a description of the project activity that occurred during the period, including but not limited to:

- A. A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
- B. The project milestones met to date and anticipated in the subsequent quarter (such as through a project Gantt Chart schedule provided quarterly in Microsoft Project format showing actual progress to date along with the baseline schedule developed at project kickoff etc.);
- C. Any additional metrics required from the capital budget proviso, legislature, governor's office, or Commerce;
- D. Quarterly updated budget projections for project expenditures;
- E. The grant expenditures to date and anticipated in the next quarter.

SPECIAL TERMS AND CONDITIONS

2.1. AUTHORITY

COMMERCE and Grantee enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2.2. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Contract.

Both parties shall promptly notify the other party in writing, of changes to the representative or their contact information.

2.3. COMPENSATION

COMMERCE shall pay an amount not to exceed the Contract Amount, for up to the Maximum Percent from Commerce of the total cost incurred by the Grantee for all things necessary for or incidental to the completion of work under this Contract as set forth in the Scope of Work. COMMERCE will not issue grant funds for costs not incurred or required for the completion of the Scope of Work.

2.4. MATCH

If the Grantee fails to provide the agreed to match, including resulting from a change in project costs to the Grantee, COMMERCE reserves the right to reduce the award amount to maintain the agreed to match requirements.

2.5. EXPENSES (THIS SECTION INTENTIONALLY DELETED.)

~~shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Grantee for authorized expenses shall not exceed \$ _____, which amount is included in the Contract total above.~~

~~Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel receive compensation for travel expenses at current state travel reimbursement rates.~~

2.6. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Grantee upon acceptance of each contract deliverable or incurred allowable expenses and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and either the costs incurred by the Grantee or the billable amount agreed to in Attachment B. The invoice shall include the Contract Number. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the account associated with the Statewide Vendor Number provided by the Grantee.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of deliverables or costs to be incurred to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for costs incurred under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that cost, unless the other funding source is approved match under this grant..

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

2.7. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section.

The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days' advance written notice of cancellation.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subgrantee/subcontractor provide adequate insurance coverage for the activities arising out of subgrants/subcontracts.

2.8. SUBCONTRACTOR DATA COLLECTION

Grantee will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Agreement performed by subcontractors and the portion of funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

2.9. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Attachment C – Proviso Language
- Program Specific Terms And Conditions
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

GENERAL TERMS AND CONDITIONS

3.1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet receiving funds under this Contract, and shall include all employees and agents of the Grantee.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Contract under a separate contract with the Grantee. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

3.2. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

3.3. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

3.4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

3.5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:

- i. All material provided to the Grantee by COMMERCE that is designated as “confidential” by COMMERCE;
 - ii. All material produced by the Grantee that is designated as “confidential” by COMMERCE; and
 - iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law.
- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grantee and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

3.6. COPYRIGHT (THIS SECTION SUPERSEDED BY PROGRAM SPECIFIC TERMS AND CONDITION 1.1)

~~Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.~~

~~“Materials” means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. “Ownership” includes the right to copyright, patent, register and the ability to transfer these rights.~~

~~For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Grantee hereby grants to COMMERCE a nonexclusive, royalty free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and~~

~~represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.~~

~~The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.~~

3.7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

3.8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

3.9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

3.10. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

3.11. RECAPTURE

In the event that the Grantee fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

3.12. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Grantee shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

3.13. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

3.14. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

3.15. SUBCONTRACTING (THIS SECTION IS SUPERSEDED BY PROGRAM SPECIFIC TERMS AND CONDITIONS 1.2.)

~~The Grantee may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.~~

~~If COMMERCE approves subcontracting, the Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.~~

~~Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee shall appropriately~~

~~monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties. Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.~~

3.16. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

3.17. TERMINATION FOR CAUSE

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Grantee shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Grantee or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Grantee: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

3.18. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

3.19. TERMINATION PROCEDURES

Upon termination of this contract, **COMMERCE**, in addition to any other rights provided in this contract, may require the Grantee to deliver to **COMMERCE** any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Grantee shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Grantee under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;

- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Grantee and in which the Authorized Representative has or may acquire an interest.

3.20. TREATMENT OF ASSETS (THIS SECTION IS SUPERSEDED BY PROGRAM SPECIFIC TERMS AND CONDITIONS 1.3.)

~~Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.~~

- ~~A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.~~
- ~~B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.~~
- ~~C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.~~
- ~~D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract~~

~~All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subcontractors.~~

3.21. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

EXHIBIT D – FEDERAL FUNDS STANDARD TERMS AND CONDITIONS

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 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 term, **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.

Subrecipient means any entity that receives Recovery Act funds from a Recipient.

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 mismanagement 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. Request for Reimbursement

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 appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

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

Certification by Governor -- Not later than April 3, 2009, 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.

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
- 5) (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-
 - a. 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
 - b. 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--
 - a. 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;
 - b. 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
 - c. 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 (dollars)*	Unit of measure	Quantity	Cost
Item 1:			
Foreign steel, iron, or manufactured good _____		_____	
Domestic steel, iron, or manufactured good _____		_____	
Item 2:			
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.]

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.

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.

HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of 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. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. 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. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Definitions: For purposes of this article, 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; and
 - (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
 - D. 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.
 - E. (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.

RECIPIENT FUNCTIONS

- 1) This delegation of Department of Energy (DOE) functions to the Recipient applies only to DBA effort performed by Subrecipients and Contractors under this award. Those functions are not delegated to the Recipient for any DBA effort performed by employees of the Recipient under this award. On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:
 - (a) Obtain, maintain, and monitor all DBA certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
 - (b) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
 - (c) 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 (b) above;

- (d) 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;
 - (e) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
 - (f) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
 - (g) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
 - (h) Provide copies of all records upon request by DOE or DOL in a timely manner.
- 2) All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.
 - 3) In the event of, and in response to any Freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.

