



Chicago Metropolitan Agency for Planning

233 South Wacker Drive
Suite 800
Chicago, Illinois 60606

312 454 0400
www.cmap.illinois.gov

June 29, 2011

REQUEST FOR PROPOSALS (RFP) NO. 075

SELECTION OF PROGRAM ADMINISTRATOR FOR ENERGY IMPACT ILLINOIS RESIDENTIAL RETROFIT REBATES PROGRAM

Chicago Metropolitan Agency for Planning (CMAP) is requesting proposals from interested firms to manage the Energy Impact Illinois Residential Retrofit Rebates Program as described in the enclosed Request for Proposals (RFP). If your organization is qualified and experienced in performing the described services, CMAP would appreciate receiving your application as indicated in this Request for Proposal. The deadline for receipt of submissions in response to the Request for Proposal is 3:00 p.m., July 20, 2011.

A non-mandatory information session will be held on July 6, 2011 at 10:00 a.m. in CMAP's offices, 233 South Wacker Drive (Willis Tower), Suite 800. Applicants may attend in person or by webinar/conference call. To attend in person, call CMAP at 312-454-0400 to be added to the Willis Tower Visitor list. Driver's license or state ID required for entry into building tower. To register for the webinar/conference call, send an email to yambriz@cmap.illinois.gov requesting RFP 075 webinar/conference call information. An e-mail with the webinar/conference call information will be sent to all who have registered by noon on July 5, 2011.

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

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

Sincerely,

Margaret McGrath
Grant/Contract Officer

Enclosure

REQUEST FOR PROPOSAL (RFP) NO. 075

SELECTION OF ADMINISTRATOR FOR ENERGY IMPACT ILLINOIS RESIDENTIAL RETROFIT REBATES PROGRAM

The Chicago Metropolitan Agency for Planning (CMAP) invites appropriate firms including residential energy audit companies, weatherization agencies, energy efficiency program administrators, and other qualified entities to submit proposals to act as administrator of the Energy Impact Illinois Residential Retrofit Rebates Program as described in the enclosed Request for Proposals (RFP). Please read each section carefully for information regarding the proposal and submittal instructions.

SECTION 1: Background and General Information

Project Background

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

The objective of the [Energy Impact Illinois](#) (EI2) program is to build a comprehensive energy retrofit program which includes strategies to build a sustainable business model to aggressively retrofit commercial, industrial, and residential buildings across northeastern Illinois. EI2 accelerates the existing Chicago Climate Action Plan implementation strategy and the Chicago Energy Efficiency Building Retrofit Strategy, across the metropolitan Chicago region including Rockford, leveraging significant existing resources and program components from partners, financial institutions and utility companies. The implementation of the EI2 is further integrated into the region's comprehensive plan, *GO TO 2040*. Over the three-year grant period, the project is expected to retrofit as many as 8,000 units, leverage more than \$125 million in local investments, and create more than 2,000 jobs.

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

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

About the Project Partners

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

The City of Chicago Department of Environment develops environmental policies, initiatives and programs, enforces the City's environmental code and regulations and works with other City departments,

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

EI2 Steering Committee

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

About the EI2 Program

The EI2 program initiates and manages program development, deployment, ongoing consultation, and evaluation of the necessary elements of a successful regional retrofit strategy. During the initial three year grant period funded by the DOE, the EI2 program will retrofit at least 8,000 units, leverage more than \$125 million in local investments, and create more than 2,000 jobs.

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

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

The EI2 program strategy includes three primary areas of work:

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

Statement of Purpose

The EI2 Partners are seeking an experienced and qualified organization to administer the Residential Retrofit Rebates Program (RRRP), which will offer eligible homeowners a significant discount on the cost of their [Illinois Home Performance](#) (IHP) home energy upgrade. This RRRP is one of seven new financial incentives that will be created through the EI2 program. CMAP has \$500,000 available to allocate under this Request for Proposals (RFP).

The EI2 RRRP aims to stimulate the residential building energy efficiency retrofit market by lowering the cost for homeowners. Residential buildings, for the purposes of this program, are single-family residences, as well as residences with no more than four dwelling units. An energy efficiency retrofit, also called a home energy upgrade, is the installation of energy conservation measures and structural improvements in an existing building designed to achieve at least a 15 percent estimated reduction in energy usage. CMAP aims to launch the RRRP in September 2011; it will continue until funds are expired but no later than May 18, 2013. The geographic scope of the RRRP is currently limited to the City of Rockford.

The RRRP will support homeowners in utilizing the IHP platform. IHP is Illinois' version of the national Home Performance with ENERGY STAR program. IHP provides a process for homeowners to follow to obtain an energy assessment and utilize qualified contractors to complete energy upgrades. Homeowners successfully obtaining an assessment and making at least one recommended upgrade receive an IHP ENERGY STAR certificate. In order to qualify for IHP, the homeowner must use an energy assessor and an energy upgrade contractor approved by IHP. To become an IHP approved assessment or upgrade contractor, a firm must provide evidence of Building Performance Institute (BPI) credentials, follow BPI standards for assessments and upgrades, and commit to a strict quality assurance and dispute resolution procedure.

CMAQ will require the contractor selected by the homeowner to be an E12 approved contractor in addition to participating in IHP in order to qualify for a rebate under RRRP. CNT Energy will be responsible for enrolling contractors as E12 approved contractors and will provide the entity selected under this RFP with a regularly updated list of approved contractors.

CMAQ envisions the RRRP will operate roughly as follows: Rockford homeowners will learn about the program through an IHP participating contractor or through general marketing efforts made by IHP or E12. A participating contractor will inform the homeowner on the opportunity to have an energy assessment and upgrade. The contractor will contact the entity selected through this RFP to reserve a rebate for the homeowner. Once the contractor has completed the work, he or she notifies the selected entity that the job is completed. The selected entity will perform a quality assurance inspection of a percentage of the completed jobs, as discussed in detail in section 2 below. Upon completion of the inspection, if required, and submittal of required documents to the selected entity, the selected entity will ensure all the information on the job is entered into the E12 reporting system, verify the eligibility of the project, and issue the rebate directly to the contractor, who will deduct the rebate from the homeowner's bill.

In addition to the rebate offered through RRRP, homeowners may be eligible for incentives from their utility for completing an energy upgrade. Nicor and ComEd are planning a launch of a program which will offer financial incentives for completing energy upgrades which may be marketed to homeowners who also qualify for the RRRP. It is CMAQ's goal that RRRP be offered in conjunction with the utilities' programs to the greatest extent possible. The selected entity may be required to coordinate with the utilities or their selected vendor to help ensure coordination. This may include utilizing a common application form, referring applicants to the utility program, and possibly splitting quality assurance inspection responsibilities with utilities' vendor, to be paid for by the utilities. The nature of this relationship will be determined in conjunction with the selected entity, CMAQ, the utilities, and their vendor.

Applicants should provide a detailed execution plan with roles and responsibilities clearly defined for all of the necessary components to support this effort including but not limited to quality assurance inspections, rebate validation and issuance, and reporting oversight. Bidders are permitted to propose a partnership framework that they feel best meets the scope of services detailed below; however partnerships or teams must designate one lead applicant, and must clearly define the roles and responsibilities for the lead and any and all subcontractor(s). The lead applicant is solely responsible for any and all sub-contractual business arrangements. The subcontractors will have no legal or contractual recourse to CMAQ. Proposals that do not incorporate 100 percent of all components listed in this RFP will not be considered. Interested firms must respond to all of the requirements outlined below.

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

General Information

As a result of responses to this RFP, CMAQ plans to review submissions and, if necessary, conduct interviews with selected applicants it determines can best meet the requirements outlined below.

Negotiations will be held as necessary to select participants that CMAP believes can best satisfy its requirements. Subject to "Reservation of Rights" below, it is anticipated the term of the contract(s) will be for a period ending on May 18, 2013.

Finalists will be selected for negotiations, at which time the final structure of the program financing/budget will be solidified and finalized in an Agreement between CMAP and the successful applicant.

SECTION 2: Scope of Project and Procurement Details

The Scope of Services represents the breadth of services that are envisioned for the E12 RRRP. CMAP encourages firms and organizations to suggest innovative approaches and partnerships that demonstrate a sound approach to administering the required program services and best cover this scope.

The selected entity will be responsible for the overall management and implementation of the RRRP. This includes performing quality assurance inspections of participating contractors in accordance with IHP protocols as well as issuing rebates for verified and qualified work. Specific responsibilities include:

- *Quality Assurance Inspections.* The selected entity will manage the RRRP's quality assurance (QA) efforts. QA standards help to maintain the reputation, quality, and value associated with the IHP and E12 brands. Furthermore, QA provides a valuable service to the participating contractors, allowing these companies to improve their techniques and reduce call-backs.

QA is conducted through inspections of upgrades completed by the participating contractor. In accordance with the IHP protocols, the number of inspections required to be made is dependent upon the number of jobs completed by contractor in the IHP program, as presented in the table below.

QA Tier	IHP Job Number	Inspection Rate
Tier One	First 3-5 jobs	100%
Tier Two	4 of the next 20 jobs	20%
Tier Three	All following jobs	5%

The selected entity will provide the required inspections for jobs completed under the RRRP. To determine which tier a contractor falls in, and thus whether or not an inspection will be required, the entity will have to verify the contractor's status with the IHP statewide coordinator, the Midwest Energy Efficiency Alliance. The number of QA inspections that will be required by the entity is not known since it will vary based on how many homes are able to receive rebates, the number of participating contractors, and contractor Tier level. However, CMAP anticipates between 25 and 50 inspections may be required.

QA inspection efforts shall include the following tasks:

- Upon contractor notification that an upgrade qualified under the RRRP is completed, contact the IHP coordinator to verify a contractors' tier position.
- Following the IHP tiers, determine if a particular retrofit requires an in-home inspection. For contractors in tiers two or three, the selection of which jobs to inspect should be random so long as the percentage of jobs inspected matches the inspection rate. (In other words, for a tier two contractor, the inspections should NOT be made of the first four jobs they report, but rather spread out randomly over the course of the next twenty jobs reported.)
- Contact the appropriate homeowners to schedule these inspections. Inspections must occur as soon as possible after the job is completed. Tier One Contractors must be present at the time of the inspection so they may see first-hand what the inspector finds.
- Perform in-home inspections to verify that the energy upgrade work was completed correctly and in accordance with IHP standards and to assist the homeowner with any

questions, issues, or concerns related to building performance and their experience with all aspects of the retrofit (assessment, improvements, test-out). QA inspections will follow procedures collectively determined by EI2 and IHP. The QA inspector must have a minimum of three years experience in home energy upgrades and hold BPI Analyst and Envelope certifications,

- Inspections will include diagnostic tests (blower door, thermal imaging, combustion safety testing, etc) based on the individual job's scope of work. The goal is to confirm diagnostic test results, verify correct installation of improvements, and determine opportunities to further improve building performance. All visual and diagnostic test inspections will be compared to the home energy assessment (energy audit) report, installed improvement listing, and test-out report provided by the contractor.
- Should QA inspections indicate repairs or corrections are required to bring such work up to standards, the contractor will be required perform these at no additional cost to the customer.
- Summarize findings of each inspection and provide this summary report to EI2, IHP, and the contractor in question.
- Work with contractors in a mentorship manner to ensure that the inspection results are utilized to improve the contractor's quality of work and guard against the same mistakes being made twice. This may involve scheduling meetings with contractors to provide feedback, review inspection results and retrofit techniques, and share best practices.
- QA Inspectors will represent EI2 as well as the statewide IHP program and are expected to display an attitude that is optimistic, encouraging, and helpful.
- *Process and Validate Rebates.* The selected entity will manage the RRRP's rebate reimbursement. This shall include the following tasks:
 - Implement a Basic Rebate Reservation System. Participating contractors must reserve their rebates in advance to ensure the funds are available. The selected entity will manage this process and work with contractors to ensure they understand they system. Proposals shall include an outline of how this process will work. Due to limited budget and scope, CMAP is not interested in funding creation of a complex IT system; the solution will likely be a simple low-tech alternative using basic tools such as a call-in and a tracking spreadsheet.
 - Receive and review rebate reimbursement forms. This form will be developed prior to program launch by the selected entity in conjunction with the EI2 implementation team.
 - Ensure the contractor has provided all of the necessary data for completing the retrofit report or has reported the retrofit in EI2 reporting and compliance tool and that the data included in the rebate reimbursement form matches that entered into the tool.
 - Validate the information on these forms to ensure the customer's application is valid. This may include reviewing all fields on submitted reports, calling the homeowner to verify they are satisfied with the work, ensuring the reported scope of work meets program requirements, ensuring satisfactory completion of the QA inspection (if applicable) and other proposed methods.
 - Maintain a record of all processes and decisions regarding rebate processing.
 - Complete any necessary tax reporting that may be required for payments made under the program.
- *Issue Rebate Checks.* Rebates in RRRP will be administered in the form of a reimbursement to participating contractors after the contractor has offered the rebate to the homeowner as a point-of-sale discount on the cost of the contractor's work. Each participating contractor will apply for reimbursement through RRRP; these reimbursement checks will be cut and mailed by the selected entity.

- *Manage Rebate Funds.* Funds will be provided to the selected entity in advance to support the rebate and must be kept in an account fully covered by the FDIC through the Temporary Unlimited FDIC Coverage for Noninterest-Bearing Transaction Accounts program provided for by Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act through December 31, 2012, an equivalent successor FDIC program, or other bank account approved by CMAP. The selected entity shall carefully manage the rebate fund money, ensuring that the funds are not overdrawn. This will include providing periodic updates to CMAP and CNT Energy on rebate funds used and remaining amount and updating the program website to indicate the level of remaining rebate funds.
- *Address questions regarding QA scheduling, rebate process and status.* Provide a dedicated phone line in order to answer questions from contractors about reserving rebates, scheduling QA inspections, and their pending reimbursements. Broader questions regarding E12 will be fielded by the program call center; however the selected entity shall answer specific questions from contractors or homeowners about how to apply for reimbursement, check on the status of their reimbursement, or to schedule a QA inspection.
- *Measurement and Verification.* Ensure contractors include with rebate requests signed permission from the homeowners for the E12 program to access utility bill data necessary to demonstrate effectiveness of the EE retrofit.
- *Compliance with the Requirements of all Applicable Federal, State and Local Laws, Codes, and Regulations.* Ensuring that all applicable Federal, State and local laws, codes, regulations, DOE policy and Guidance, and instructions within this request for proposals, are complied with unless relief has been granted by the DOE and CMAP; Ensuring flow down of the requirements of applicable Federal, State, and local laws, regulations, DOE policy and guidance and instructions in the RFP to sub-recipients at any tier to the extent necessary to ensure compliance with the requirements and verify that contractors are meeting these requirements. CMAP and CNT Energy will work with the selected entity to outline the exact requirements. Awardees of the RRRP must adhere to all program notices issued by DOE applicable to the EECBG program including any future amendments.
- *Reporting.* Enter on behalf of the contractor, or ensure the contractor has entered, all of required information about the retrofit job into the E12 reporting software, including but not limited to:
 - Energy assessment or audit information including:
 - date audit completed.
 - audit software type.
 - estimated electric savings (kWh).
 - estimated electric percent savings
 - estimated gas savings (therms or Ccf).
 - estimated gas percent savings
 - audit cost (\$)
 - total audit hours
 - Project specification information including:
 - building floorspace (sq.ft.)
 - # of floors.
 - # of units
 - building year constructed
 - project scope of work
 - Project completion date
 - Contractor certification(s)
 - Job hours (including those of subs)
 - Project cost (& source of funds)
 - estimated electric savings (kWh) based on installed measures
 - estimated electric percent savings based on installed measures
 - estimated gas savings (therms or Ccf) based on installed measures
 - estimated gas percent savings based on installed measures

- estimated annual cost savings (\$) based on installed measures
- Project costs and funding sources

Additionally, the awardee will complete a monthly narrative report to CMAP documenting progress, hours worked on the project, and provide monthly and quarterly financial reports.

Rebate Program Details

The planned incentive levels and planned requirements for the RRRP appear below. CMAP may refine the exact rebate levels or program requirements in conjunction with input from the selected entity to ensure success as the program progresses.

- Rebates shall be offered as a point-of-sale discount on the customer’s bill, administered by the participating contractor and offered to the customer during the “kitchen table discussion” – allowing the homeowner to be able to afford purchasing a deeper, more comprehensive retrofit as their cost will be lower from the onset. Participating contractors will reserve the rebate through the selected entity’s reservation system. The reservation shall be held for a limited time period, to be proposed by the selected entity.
- Participating contractors will be reimbursed for these incentives after submitting the required reporting and customer receipt, both of which will be reviewed and validated by the selected entity.
- Rebates are designed to promote a whole-house "building-as-a-system" approach to installations. In all instances, Participating Contractors will be encouraged to steer homeowners towards the highest energy savings possible.
- Rebates will not pay for the full project cost or full cost of any of the project components (i.e. energy audit or improvements). This is intended to lower the barrier to entry while still requiring the homeowner to have some buy-in.
- Only homeowners that meet the following criteria will be eligible:
 - Reside in the City of Rockford.
 - Participate in IHP.
 - Homeowner completes a home energy upgrade (retrofit) resulting in at least 15% total estimated energy savings.
- Rebates will be tiered based on the scope of the retrofit work, with higher incentives coinciding with higher energy savings, in order to reward homeowners for completing deeper retrofits and discourage installation of single-measure improvements such as installing a new HVAC system without addressing ductwork.
- Proposed rebates dollar amounts are as follows:

Total estimated energy savings	Rebate amount
15-20%	50% of project cost, up to \$1000
21-29%	50% of project cost, up to \$1200
30% and up	50% of project cost, up to \$2000

Project cost is defined as the cost of the energy audit as well as any home improvement item that results in energy savings, is specified on the energy audit report, and is qualified under EI2/EECBG restrictions. These improvements may include items such as air sealing, attic or wall insulation, sealing and insulating air ducts, repairing or replacing old or poorly functioning heating and cooling systems and appliances.

- Rebates shall only be available through IHP Participating Contractors who will also have signed the EI2 Addendum Agreement. All IHP Contractors must meet stringent requirements and are held responsible for their actions in the program. Disciplinary and dispute resolution procedures are in place.
- To the greatest extent possible, the program will be coordinated with utility energy efficiency programs that choose to also offer IHP or related incentives in the same area as EI2. In this event, CMAP may work with the selected entity to refine the rebate structure to allow for a

combined rebate with the utility program or for an incentive to conduct a “deeper” retrofit than the utility program. Should the utility program also offer quality assurance inspections, the selected entity will need to coordinate with the utility program administrator to ensure that the same jobs is not inspected by both parties. This will likely be accomplished with a phone call to the utility program administrator to determine if they will be inspecting a reported job or similar type of communication between the administrators.

CMAP and E12 partners will provide:

- *Program Coordination.* CMAP and CNT Energy will coordinate project implementation among all partners and parties including IHP, who will provide targeted marketing, education, and contractor enrollment in support of the Energy RRRP.
- *Funding.* CMAP has \$500,000 available to allocate under this Request for Proposals (RFP) to cover both the homeowner incentives and cost of operating the program (quality assurance and other tasks outlined in this scope). CMAP is interested in maximizing the availability of funds for rebates.
- *Broad Marketing and Referral Source.* As part of the E12 program, there will be a regional marketing and communication strategy as well as an information portal for connecting homeowners to information about energy efficiency retrofits, tools for assessing energy usage and information on E12-supported and other financing programs for single-family homeowners. The selected entity will be expected to contribute information about the program to the information portal as well as answer questions from interested homeowners.
- *Reporting Structure and Oversight.* An electronic system will be provided for capturing data on expenditures made and project-specific energy usage and projected savings. CMAP will submit data from this electronic system to the US DOE systems as required, but the applicant must agree to submit information to the Energy Impact Illinois electronic reporting system. Training will be provided on use of the system. Additionally, CMAP and CNT Energy will provide oversight of the selected entity to ensure that they are complying with all applicable provisions of the agreement and federal requirements.
- *Compliance Training and Assistance.* CNT Energy will assist the selected entity in determining how to apply the federal provisions to the program or to individual projects and documenting compliance. These requirements may include but are not limited to ARRA reporting, Davis-Bacon, Buy American, NEPA, and SHPA requirements. The applicability of these requirements varies based upon the structure of the financing arrangement; a discussion of which can be found at http://www1.eere.energy.gov/wip/pdfs/eecbg_financing_guidance2010_08_10.pdf Ultimate responsibility for compliance with the contracted agreements will remain with the selected entity.
- *Energy Efficiency Expertise.* The E12 and implementation agency partners are well versed in energy efficiency measures, energy auditing, and verification. As necessary, we will consult with the selected entity on establishing program standards and best practices and will provide project specific expertise as necessary.
- *Work Force Guidelines.* As part of the E12 program, we will be creating a standard set of guidelines and requirements for certification for energy efficiency auditors and/or contractors as well as construction specifications. As these guidelines are developed, the selected entity will be expected to integrate them into the program.

Use of Grant Funds

CMAP has \$500,000 available to allocate under this Request for Proposals (RFP), including both the value of the rebates and the administrative costs. E12 is seeking cost effective proposals that accomplish the goals and scope of services outlined in this RFP. Since the cost of the administrative services is being requested to be bid through this RFP, the total sum available for rebates, and therefore the number of potential participants is unknowable, although CMAP estimates the RRRP will result in at least 225 rebates. Given the unknowable quantities, proposals must provide two per-unit costs, one for issuing a rebate (with all the verification of eligibility and data input included) and one for conducting a QA

inspection. These per-unit costs must be all-inclusive of costs (including, but not limited to staff time, supplies, postage, mileage or local travel, overhead, etc).

SELECTION PROCESS SCHEDULE

On July 6, 2011 at 10:00 a.m. CST, a non-mandatory information session will be held in CMAP's offices, 233 South Wacker Drive (Willis Tower), Suite 800. Call CMAP at 312-454-0400 to be added to the Willis Tower Visitor list. Driver's license or state ID is required for entry into building tower. To join by webinar/conference call, e-mail yambriz@cmapp.illinois.gov requesting RFP 075 webinar/conference call information by noon on July 5.

June 29: RFP Issued
July 6: Information Session
July 20: Proposals Due
July 27: Finalist Interviews
August 10: Estimated CMAP Board approval

EVALUATION AND AWARD PROCESS

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

The following criteria will be used to evaluate proposals:

1. Building Science Expertise

Ability to thoroughly evaluate residential retrofit activity and effectively implement quality assurance inspections in a professional manner; History of following BPI standards through performing energy audits and/or home energy upgrades; Familiarity with single family homes indicative of those found in Rockford; Ability to act as an expert resource to participating homeowners and contractors in regards to questions about the quality of the work as inspected.

2. Applicant Capacity

Demonstration of required skills and experience to implement project as proposed; Capacity of staff to conduct QA inspections, review complicated reports, process checks, and maintain exceptional electronic records; Superior level of organization and attention to detail; Capacity to be physically available to offer QA inspections in the City of Rockford beginning September 2011; Demonstrated experience and capacity to oversee and monitor energy efficiency activity including meeting all ARRA reporting requirements and compliance (Davis Bacon, NHPA, NEPA, etc.)

3. Soundness of Approach

Clarity of plan for implementing the project and meeting stated objectives; Plan for implementing the program will result in the completion of tasks outlined in the scope of services within the specified timeframe; Evidence of plan and ability to rapidly process rebates to the contractors; Applicant and partners have demonstrated experience in completing similar projects.

4. Cost Effectiveness of Proposal

The E12 Project Partners will evaluate applicants to ensure that funds are used in the most effective manner possible, maximizing the portion of funds allocated to direct homeowner rebates.

5. Firm Reputation

Based on References

SECTION 3: Submittal Requirements

Proposals Must be Received at CMAP on or before 3:00 p.m. July 20, 2011

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

1. Applicant Background & Experience

Please summarize the applicant and any partners' qualifications and experience to undertake this Program. Identify capacity in terms of staff and other resources necessary to implement the target number of QA inspections, reporting reviews, and rebate processing within the project timeframe. Provide an overview of the quality inspectors' qualifications and experience in building science, home energy assessment and analysis (documenting, at a minimum, three years experience in home energy upgrades and attainment of BPI Analyst and Envelope certifications), energy usage modeling, and supervising, training or mentoring in the home energy or building science fields.

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

- Program Manager responsible for this Program who will provide the lead and primary point of contact for the program administration;
- QA Inspector(s) who will be responsible for providing oversight of contractors.

2. Program Implementation

Provide a narrative describing the proposed approach to addressing the scope of service requested in this RFP, including procedures for handling contractor and customer inquiries, taking and tracking rebate reservations, completing reporting requirements, coordinating with any utility programs, completing the QA inspections (including coordinating with the contractor and customer regarding timing and access), and processing the rebates (including ensuring their validity). Please document the timeframes for conducting QA inspections following notification from the contractors, as well as the timeframe for issuing rebate checks. Provide sufficient evidence that program implementation can begin promptly upon contract signing and provide a timeline for program start-up tasks.

3. Program Budget

Provide a budget narrative for the implementation of program that covers the operations of the program and documents the per-transaction cost of the rebate processing (including reporting) and quality insurance inspections. Sign and submit Attachment 1, "Price Proposal Form."

4. References

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

5. Letters of Commitment

Firms that plan on sub-contracting or relying on any other organization to do some of the work, provide services or equipment must include a letter from that organization describing their planned participation and commitment.

6. Bidder Forms

The respondent shall also sign and submit all three bidder forms: the "Price Proposal Form," Attachment 1 as mentioned above, "Certificate Regarding Workers' Compensation Insurance," Attachment 2, and the "Information to be Provided by Bidder," Attachment 3.

Submission of Proposals

Three (3) paper copies of all applications as well as one (1) electronic version in PDF format on CD ROM or USB drive must be submitted no later than 3:00 p.m., July 20, 2011. Submissions must be in a sealed package or envelope. The applicant's organization name and address shall appear in the upper left corner of the package.

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

Chicago Metropolitan Agency for Planning
Attn: Grant/Contract Officer
Response to RFP No. 075
233 S. Wacker Drive, Suite 800
Chicago, IL 60606

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

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

SECTION 4: Contractual Agreement and Rights

Contractual Agreement

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

Reservation of Rights

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

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

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

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

SECTION 5: General Provisions

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

1. Complete Agreement.

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

2. Chicago Metropolitan Agency for Planning Designee. Only the Executive Director of CMAP, or designee, shall have the authority to act for and exercise any of the rights of CMAP as set forth in this

Agreement, subsequent to and in accordance with the authority granted by CMAP's Board of Directors.

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

- (1) If any litigation, claim or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- (2) Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after its final disposition.

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

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

7. Termination.

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

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

13. Federal Reporting Standards.

- a. The Contractor agrees that any material or design specified by the Contractor or supplied by the Contractor pursuant to this Agreement shall not infringe any patent or copyright and the Contractor shall be solely responsible for securing any necessary licenses required for patented or copyrighted material used by the Contractor.
- b. If any claim is brought against CMAP by third parties for alleged infringement of third-party patent and copyright and intellectual rights, which claim is caused by breach of the Contractor's promise as contained in paragraph a of this clause, the Contractor shall save harmless and indemnify CMAP from all loss, damage or expense (including attorney's fees) due to defending CMAP from such claim.
- c. If the principal purpose of this Agreement is to create, develop or improve products, processes or methods; or to explore into fields which directly concern public health, safety or welfare, or if the Project is in a field of science or technology in which there has been little significant experience outside of work funded by federal assistance; and any discovery or invention arises or is developed in the course of or under this Agreement, such invention or discovery shall be subject to the reporting and rights provisions of U.S. Office of Management and Budget Circular No. A-102, and to the pertinent regulations of the grantor agency(ies) in effect on the date of execution of this Agreement. The Contractor shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts under this Agreement involving research, developmental, experimental or demonstration work.

14. Assignment.

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

15. Subcontracts.

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

16. Conflict of Interest. In order to avoid any potential conflict or interest, the Contractor agrees during the term of this Agreement not to undertake any activities which could conflict directly or indirectly

with the interest of CMAP. Contractor shall immediately advise CMAP of any such conflict of interest. CMAP shall make the ultimate determination as to whether a conflict of interest exists.

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

25. Forced Labor. Contractor certifies it complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to CMAP under this agreement have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).

Federally Funded Agreements

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

SECTION 6: Special Provisions

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

Attachment 2: Certificate Regarding Workers' Compensation Insurance

Certificate Regarding Workers' Compensation Insurance

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

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

Bidder/Contactor _____

Signature _____

Name and Title _____

Date _____

Attachment 3: Information to be provided by Bidder

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

Firm Name: _____ Contact Person: _____

Business Address:

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

Years of Experience: _____

Type of Firm – Sole Proprietor, Partnership, Corporation, Joint Venture, Etc.: _____

Organized under the laws of state of: _____

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

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

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

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

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

a. _____

b. _____

c. _____

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



Chicago Metropolitan
Agency for Planning

233 South Wacker Drive
Suite 800
Chicago, Illinois 60606

312 454 0400
www.cmap.illinois.gov

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

Federally Funded Agreement Certifications

Department of Energy –

ENERGY IMPACT ILLINOIS (EI2) PROGRAM

SIGNATURE

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

Name of Contractor: _____

Printed Name and Title of
Authorized Representative: _____

SIGNATURE

DATE

SPECIAL TERMS AND CONDITIONS

Table of Contents

<u>Number</u>	<u>Subject</u>	<u>Page</u>
1.	RESOLUTION OF CONFLICTING CONDITIONS.....	2
2.	AWARD AGREEMENT TERMS AND CONDITIONS.....	2
3.	ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS.....	2
4.	PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM.....	2
5.	CEILING ON ADMINISTRATIVE COSTS.....	3
6.	LIMITATIONS ON USE OF FUNDS.....	3
7.	REIMBURSABLE INDIRECT AND FRINGE BENEFIT COSTS.....	3
8.	USE OF PROGRAM INCOME.....	4
9.	STATEMENT OF FEDERAL STEWARDSHIP.....	4
10.	SITE VISITS.....	4
11.	REPORTING REQUIREMENTS.....	4
12.	PUBLICATIONS.....	5
13.	FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS.....	5
14.	INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION.....	5
15.	LOBBYING RESTRICTIONS.....	6
16.	NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS.....	6
17.	HISTORIC PRESERVATION.....	6
18.	WASTE STREAM.....	7
19.	DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS.....	7
20.	SUBGRANTS, SUBCONTRACTS, AND LOANS.....	7
21.	ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS.....	8
22.	SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009).....	8
23.	REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT.....	13
24.	NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS.....	14
25.	REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.....	14
26.	REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.....	17
27.	WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT.....	21
28.	RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS.....	22
29.	DAVIS-BACON ACT AND CONTRACT WORKHOURS AND SAFETY STANDARD ACT.....	22

1. RESOLUTION OF CONFLICTING CONDITIONS

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

2. AWARD AGREEMENT TERMS AND CONDITIONS

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

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

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

3. ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

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

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

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

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

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

5. CEILING ON ADMINISTRATIVE COSTS

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

6. LIMITATIONS ON USE OF FUNDS

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

7. REIMBURSABLE INDIRECT AND FRINGE BENEFIT COSTS

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

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

8. USE OF PROGRAM INCOME

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

9. STATEMENT OF FEDERAL STEWARDSHIP

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

10. SITE VISITS

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

11. REPORTING REQUIREMENTS

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

12. PUBLICATIONS

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

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

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

13. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

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

14. INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

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

15. LOBBYING RESTRICTIONS

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

16. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

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

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

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

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

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

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

17. HISTORIC PRESERVATION

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

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

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

18. WASTE STREAM

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

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

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

20. SUBGRANTS, SUBCONTRACTS, AND LOANS

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

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

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

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

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

21. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS

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

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

Preamble

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

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

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

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

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

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

Definitions

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

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

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

Special Provisions

A. Flow Down Requirement

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

B. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

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

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

E. Publication

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

Notice of Restriction on Disclosure and Use of Data

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

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

F. Protecting State and Local Government and Contractor Whistleblowers.

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

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

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

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

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

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

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

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

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

G. Reserved

H. False Claims Act

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

I. Information in Support of Recovery Act Reporting

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

J. Availability of Funds

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

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

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

will be used to create jobs and promote economic growth.

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

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

L. Certifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Domestic preference.*

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

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

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

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

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

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

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

[Include other applicable supporting information.]

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

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

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

Designated country --

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

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

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

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

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

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

Domestic iron, steel, and/or manufactured good –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

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

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

[Include other applicable supporting information.]

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

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

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

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

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

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

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Davis Bacon Act

(1) Minimum wages.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees—

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

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

(c) Recipient Responsibilities for Davis Bacon Act

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

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

(d) Rates of Wages

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

