



INVITATION FOR BIDS
City of Newport News
NEWPORT NEWS LIGHTING UPGRADE
IFB#2011-3384-2005

November 24, 2010

Purchasing Department, Office of the Purchasing Director
4th Floor, City Hall, 2400 Washington Avenue
Newport News, VA 23607

Phone: (757) 926-8031/ Fax: (757) 926-8038

<http://www.nngov.com/purchasing>

Sealed bids subject to the conditions and instructions contained herein, will be received at the above office of the Purchasing Director, 4th Floor, City Hall, 2400 Washington Avenue, Newport News, Virginia 23607, until the time and date shown below (local prevailing time), for furnishing the items or services described in the bid.

SCOPE OF WORK – Provide complete sets of LED streetlight luminaire for the upgrade of the city-maintained traditional streetlights. This project is funded by American Recovery and Reinvestment Act (ARRA). The program will be administered by Energy, Efficiency, and Conservation Block Grant (EECBG) under the Department of Energy (DOE). Contractors shall comply with the provisions of the ARRA regulations. Contractor to take special consideration for compliance with the Buy American requirements: the standards identified in the Buy American Act, 41, USG §§10a-10d.

Optional Pre-Bid Meeting: 11:00 a.m., December 2, 2010 at City Hall Building, 4th Floor, Purchasing Conference Room, 2400 Washington Avenue, Newport News, VA 23607

Bid Due: 3:00 p.m., December 21, 2010

Shari D. Colvin

Contract Officer: _____

Shari D. Colvin, CPPB, Deputy Director, scolvin@nngov.com and Brenda Vines, Assistant Buyer, bvines@nngov.com

In compliance with this invitation for bids, and subject to all the conditions thereof, the undersigned offers, if this bid is accepted within (60) calendar days from the date of the opening, to furnish any or all of the items and/or services upon which prices are quoted, at the price set opposite each item, to be delivered at the time and place specified herein. The undersigned certifies he has read, understands, and agrees to all terms, conditions, and requirements of this bid, and is authorized to contract on behalf of firm named below.

Company Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____ FAX No.: _____

E-mail: _____

Print Name: _____ Title: _____

Signature: _____ Date: _____

This form must be signed. All signatures must be original and not photocopies.

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CONDITIONS AND INSTRUCTIONS

Rev: 10/08/2010

1. All bids shall be submitted on and in accordance with this form. If more space is required to furnish a description of the commodities and/or services bid, or delivery terms, the bidder may attach a letter hereto that will be made a part of the bid. All bids shall be submitted sealed, plainly marked showing the bid number, date and time. The entire solicitation document is to be returned when submitting a bid, unless otherwise directed by the bid document. Failure to return all pages may result in a determination that the submittal is non-responsive.
2. Bids and amendments thereto, if received by the Purchasing Department after the date and time specified for bid opening, will not be considered. It will be the responsibility of the bidder to see that their bid is received by the Purchasing Department as specified. There will be no exceptions. Date of postmark will not be considered. Telephone, facsimile, electronic and verbal bids will not be accepted. Prices or changes shown on the outside of an envelope will not be considered in determination of low bid.
3. If City Hall is closed for business at the time scheduled for bid opening, for whatever reasons, sealed bids will be accepted and opened on the next business day of the City, at the originally scheduled hour.
4. Each bid is received with the understanding that the acceptance in writing by the City of the bidder to furnish any or all of the commodities and/or services described therein, shall constitute a contract between the bidder and the City, which shall bind the bidder on his part to furnish and deliver the articles quoted on at the prices stated and in accordance with the conditions of said accepted bid; and the City on its part to order from such bidder, except for causes beyond reasonable control; and pay for, at the agreed prices, all articles specified and delivered.
5. Bidders have the right to request withdrawal of their bids from consideration due to error by giving notice not later than two days after bids are publicly opened. Work papers showing evidence of error(s) may be required. Upon request Administrative withdrawal procedures will be provided that shall be used for that purpose.
6. If issued, addenda to this solicitation will be posted on the Purchasing Department's website (www.nngov.com/purchasing). It is the bidder's responsibility to check the website or contact the Purchasing Department prior to the submittal deadline to ensure that the bidder has a complete, up-to-date package.
7. The solicitation document maintained by the Purchasing Department, in the bid file folder, shall be considered the official copy. In the case of any inconsistency between bid documents submitted to the City, but not clearly listed on the exception page of the document as an exception by the bidder, the language of the official copy shall prevail. Furthermore, any exception or changes to the specifications made by the bidder may cause to disqualify your bid.

8. Award will be made to the lowest responsive and responsible bidder. The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements, the delivery terms, qualifications and references will be taken into consideration in making an award. Length of time for delivery as well as price may be considered in awarding the bid.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted; except that if the bid from the lowest responsible bidder exceeds available funds, the purchasing director may negotiate with the apparent low bidder to obtain a contract price within available funds.

Upon making an award, or giving notice of intent to award, the City will place appropriate notice on the public bulletin board located outside of the Purchasing Department at City Hall. Notice of award may also appear on the Purchasing Website: www.nngov.com/purchasing or www.demandstar.com.

9. The City reserves the right to reject any and all bids, and to waive any informality if it is determined to be in the best interest of the City.
10. Prices shall be stated in units of quantity specified. No additional charges shall be passed to the City, including any applicable taxes, delivery or surcharges. Prices quoted shall be the final cost to the City.
11. All prices and notations should be in ink or typewritten. Mistakes may be crossed out and corrections made in ink and must be initialed and dated in ink by the person signing the bid.
12. In case of error in the extension of prices, the unit price shall govern.
13. The time of proposed delivery must be stated in definite terms. If time of delivery for different commodities varies, the bidder shall so state.
14. Samples, when requested, must be furnished free of expense, and upon request, if not destroyed, will be returned at the bidder's risk and expense.
15. Unless qualified by the provision "NO SUBSTITUTE", the use of the name of the manufacturer, brand make or catalog designation in specifying an item does not restrict bidders to the manufacturer, brand, make or catalog designation identification. This is used simply to indicate the character, quality and/or performance equivalence of the commodity desired. The commodity on which bids are submitted must be of such character, quality and/or performance equivalence that it will serve as that specified. In submitting bids on a commodity other than as specified, bidder shall furnish complete data and identification with respect to the alternate commodity they propose to furnish.

Consideration will be given to bids submitted on alternate commodities to the extent that such action is deemed to serve the best interests of the City. If the bidder does not

indicate that the commodity he proposes to furnish is other than specified, it will be construed to mean that the bidder proposes to furnish the exact commodity described.

16. The apparent silence of these specifications and any supplemental specifications as to any detail or the omission from the specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and correct type, size and design are to be used. All interpretations of these specifications shall be made on the basis of this statement.
17. All bids must be signed by an authorized, responsible officer or employee having the capacity to enter contracts. Obligations assumed by such signature must be fulfilled.
18. By signing this bid, the bidder assigns to the City any and all rights that he may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to this bid. This provision is remedial in nature and is to be liberally construed by any court in favor of the City.
19. The bidder certifies by signing this Invitation for Bid that this bid is made without prior understanding, agreement, or accord with any other person submitting a bid for the same product or service and that this bid is in all respects bona fide, fair and not the result of any act of fraud or collusion with another person engaged in the same line of business or commerce. Any false statement hereunder constitutes a felony and can result in a fine and imprisonment, as well as civil damages.
20. The contractor guarantees to defend and save the City, its agents and employees, harmless from liability of any nature or kind, for use of any copyright, composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, or which the contractor is not the patentee, assignee, or licensee.
21. The contractor shall keep himself fully informed of all federal, state and local laws, ordinances and regulations that in any manner affect the conduct of the work. The contractor shall at all times observe and comply with all such laws, ordinances and regulations and he shall protect and indemnify the City, and its representatives against any claim or liability arising from or based on any violation of the same, whether by the contractor, his subcontractors, suppliers of materials or services, or others engaged by the contractor or the employees of any of them. **The contractor certifies that he does not and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, as amended.**

Every business must register with the Virginia State Corporation Commission before transacting business in Virginia.

22. **Contractor's License** If any of the services promulgated under this solicitation consist of construction work, it is required under Title 54.1, Chapter 11, Code of Virginia for a

contractor who performs or manages construction, removal, repair, or improvements when the total value referred to in a single contract or project is:

Seventy thousand dollars (\$70,000) or more, or the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is five hundred thousand dollars (\$500,000) or more shall show evidence of being licensed as a **Class A Contractor**.

Seventy-five hundred dollars (\$7,500.00) or more, but less than seventy thousand dollars (\$70,000) or the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is one hundred and fifty thousand dollars (\$150,000) or more, but less than five hundred thousand dollars (\$500,000) shall show evidence of being licensed as a **Class B Contractor**.

Over one thousand dollars (\$1,000) but no more than seventy-five hundred dollars (\$7,500) or the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is no more than one hundred and fifty thousand dollars shall show evidence of being licensed as a **Class C Contractor**.

The City shall require master certification as a condition of licensure or certification of electrical, plumbing and heating, ventilation and air conditioning contractors.

A valid business license from the City may be required. The bidder shall complete whichever of the following notations as appropriate:

"Licensed Class A Virginia Contractor No. _____."

"Licensed Class B Virginia Contractor No. _____."

"Licensed Class C Virginia Contractor No. _____."

23. Availability of Funds: A contract shall be deemed in force only to the extent of appropriations available to each department for the purchase of such articles or services. The City's extended obligations on those contracts that envision extended funding through successive fiscal periods shall be contingent upon actual appropriations for the following years.
24. In event of default by the contractor, the City reserves the right to procure the commodities and/or services from other sources, and hold the contractor liable for any excess cost occasioned thereby.
25. Appeals Procedure: Upon your request, administrative appeals information will be provided that shall be used for hearing protests of a decision to award or an award, appeals from refusal to allow withdrawal of bids, appeals from disqualification, appeals for debarment or suspension, or determinations of non-responsibility and appeals from

decision or disputes arising during the performance of a contract. To be timely, all appeals, except contract disputes, shall be made within ten days of either public notice of award, or the actual award, whichever is first.

26. **It is the policy of the City of Newport News to facilitate the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in the City's procurement activities. Toward that end, the City of Newport News encourages these firms to compete and encourages non-minority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Bidder is requested to complete the SMB, MBE and WBE Business Objectives form within this document.**
27. The City has a directory of Newport News Minority and Women-owned businesses. The directory is distributed, at request, at no additional cost.
28. This public body does not discriminate against faith based organizations.
29. Non-Discrimination: During the performance of this contract, the contractor agrees as follows:
 - (a) He will not discriminate against any employees or applicants for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where one or more of these are a bona fide occupational qualification reasonably necessary to the normal operations of the contractor. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - (b) The contractor will be and state that he is an equal opportunity employer in all solicitations or advertisements for employees.
 - (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The contractor will include the provisions of the foregoing paragraphs (a), (b) and (c) in every subcontract or purchase order of over ten thousand dollars so that the provisions will be binding upon each subcontractor or vendor.

30. During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the

actions that will be taken against employees for violations of prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this subsection, “A drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this subsection, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

31. **Assignment of Contract:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the City.
32. **Applicable Law and Courts:** Any purchase order/contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The contractor shall comply with applicable federal, state and local laws and regulations.
33. **Severability:** If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected hereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law.
34. **Scheduling and Delays –** The parties to any contract resultant of this solicitation acknowledge that all or part of the work to be performed hereunder may be delayed and extended at the option of the City. Such delays may be caused by delays, denials, and modifications of the various state or federal permits, or for other reasons. The City shall not be required to pay any of the Contractor’s direct or indirect costs, or claims for compensation, extended overhead, or other damage or consequential damages arising out of or related to any delays or interruptions required or ordered by the City. If the City delays the project for any reason for a continuous period of 6 months or more, the City and Contractor will negotiate a mutually agreeable adjustment to the Contractor’s award amount.
35. **Cancellation:** The City may cancel the contract immediately for violations of safety or rules of ethics. The City may cancel a contract thirty (30) days after the City has given a written request for a cure for vendor non-performance if such cure has not occurred. Cancellation shall not release the vendor from legal remedies available to the City.
36. **Bid Bond:** A bidder’s bond or certified check in the amount of five percent (5%) of the amount bid shall accompany any bid in excess of \$100,000.00 for the bid to be acceptable.

37. **Performance and Labor and Material Payment Bond:** The Contractor shall have ten (10) days from the date of the City's request to provide a performance bond and a labor and material payment bond, (Use only the forms provided by the City, unless otherwise approved by the City Attorney) in the amount of the contract price, as security for faithful performance of the work in strict conformity with the Contract Documents and for payment of all persons who perform labor and furnish materials in prosecution of the work. The surety on such bonds shall be duly authorized to do business in the Commonwealth of Virginia and be satisfactory to the City.
38. **Direct contact with City departments other than Purchasing, on the subject of this bid is expressly forbidden except with the foreknowledge and permission of the Director of Purchasing or their representative. Violation may result in a determination that your firm is ineligible for award.**
39. Questions or comments related to this solicitation should be directed to the Contract Officer, whose name and contact information appears on the front of this document. All questions must be submitted in writing (facsimile or email); telephonic inquiries will not be considered.
40. Successful bidder shall furnish all required bonds, certificates of insurance and required endorsements on City approved forms included in this bid package. Any other forms are not acceptable and shall not be approved by the City Attorney's office. Time is critical on this work and non-compliance will delay the work and may be cause to make award to the next qualified bidder.
41. **Engineering Standard Specifications: This contract consists of plans, technical specifications and the Department of Engineering Standard Specifications. The Standard Specification are available for \$15.75, including tax, per copy non-refundable, from the Department of Engineering, City Hall Building, 8th floor, Newport News, Virginia 23607, telephone (757) 926-8611. In the Standard Specification any/all references to the Director of Engineering, which involves the initial Invitation For Bid and prior to an actual contract being awarded shall be defined and interpreted as the City's Purchasing Director or their designee.**
42. **Liquidated Damages: TIME IS OF THE ESSENCE ON THIS CONTRACT.** Failure of the Contractor to complete the work within the time allowed will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for completion of the work, the Contractor shall pay to the City, or have withheld from monies due it, the sum of **\$300.00 per day.**

Execution of the contract under these specifications shall constitute agreement by the City and Contractor that this amount per day is the minimum value of the costs and actual damage caused by failure of the Contractor to complete the work within the allotted time,

that such sum is liquidated damages and shall not be construed as a penalty, and that such sum may be deducted from payments due the Contractor if such delay occurs.

Permitting the Contractor to continue and finish the work or any part thereof after the contract time or adjusted contract time, as pertinent, has expired shall in no way operate as a waiver on the part of the City or any of its rights under the contract.

Payment of liquidated damages shall not release the Contractor from obligations in respect to the fulfillment of the entire contract, nor shall the payment of such liquidated damages constitute a waiver of the City's right to collect any additional damages which may be sustained by failure of the Contractor to carry out the terms of the contract, it being the intent of the parties that said liquidated damages be full and complete payment only for failure of the Contractor to complete the work on time.

43. **Permits:** Contractor shall be responsible for obtaining all permits, as required by the City of Newport News, prior to start of construction. **The Contractor shall obtain and pay for all Department of Engineering permits i.e. Right-of-Way, disposal, land disturbing, etc. The fees for these permits are no longer waived on City projects. However, fees for Code Compliance required permits are still waived and shall not be required.** Proof of approved final inspections shall be required before final payment is made.
44. **Insurance:** The contractor shall maintain adequate liability insurance, which shall protect and save harmless the City of Newport News, Virginia, and its officials from all suits and actions of every kind and description arising from injury or damage to persons and property in the prosecution of said work or in failure to properly safeguard same, and from all claims arising under the workmen's compensation laws. The contractor shall furnish proof of said insurance prior to commencement of services. Separate forms, which name the City as additional insured and as alternate employer, must be included with the Certificate of Insurance. **Please make sure prior to submitting a bid that all insurance endorsements forms have been reviewed by your insurance carrier.**

The Commonwealth of Virginia requires construction contractors and subcontractors to obtain and maintain worker's compensation insurance while performing work on behalf for the City. Evidence of coverage needs to be provided prior to commencement of work.

Sample forms CG 20-10 (naming the City as additional insured for liability claims) and WC 00-03-01 (naming the City as an alternate employer for Worker's Compensation claims); and the Commonwealth's form for Worker's Compensation Certificate of Coverage are attached (**See Section B**).

Contractor shall have ten (10) days from the date of the city's request, to provide insurance documentation. Failure to provide the Certificate and forms within this period may be cause for the City to award a contract to the next responsive bidder, and hold the original contractor liable for excess costs.

45. The Conditions and Instructions in this solicitation are intended to apply to the resulting contract and shall supersede any conflicting terms offered. Any additional conditions a bidder intends to be considered must be submitted with the bid as an exception. Such exceptions may result in a finding that the submittal is 'non-responsive' to the bid, negating possibility of an award to that bidder. Contractual documents submitted by the successful firm after an award will not be accepted. Failure of the contractor to perform the contract by reason of this non-acceptance of additional conditions shall result in termination of the contract by the City for cause, and may result in debarment of the Contractor for a period of up to three years. Such actions taken by the City shall not release the Contractor from additional remedies that may be allowed by law.

46. ARRA Project Requirements:

The Contractor is advised this project has been identified by the City of Newport News for advertisement, award and construction subject to criteria and conditions established under the American Recovery and Reinvestment Act of 2009 (ARRA). Standard Special Provisions and Special Provision Copied Notes used for federal-aid projects will remain the same under this Act.

The reporting criteria will be mandatory upon the Contractor and any subcontractors and must be accomplished within the timeframe(s) and to the full extent requested. Incomplete reporting of requested information will not be tolerated and will be interpreted as failure to meet the requirements of this provision and, therefore, subject to the sanctions contained herein.

Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 provides the U. S. Comptroller General and his representatives with the authority to:

- 1) To examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- 2) To interview any officer or employee of the Contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Additionally, Section 1515(a) of the ARRA provides authority for any representatives of the U. S. Inspector General to examine any records or interview any employee or officers working on this contract. The Contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer

of the Contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

47. ARRA Use of Domestic Material

Section 102.05 Preparation of Bid of the Specifications is amended to include the following:

In accordance with the provisions of Section 635.410(b) of title 23 CFR, herein after referred to as “Buy America”, except as otherwise specified, all iron, steel, and manufactured products to be permanently incorporated into the project shall be produced in the United States of America. The law also requires that this prohibition be applied in a manner consistent with U. S. obligations under international agreements. A manufactured good is defined as a good brought to the construction site for incorporation into the building or work that has been processed into a specific form and shape or combined with other materials to create a material that has a different property than the individual raw materials. There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States (see 2 CFR 176.70(a)(2)(ii).

Waivers:

Determination of inapplicability (categorical waiver) under section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) for LED traffic lights, arrows, and crosswalk signals; fluorescent electronic lighting ballasts (with the exception of electronic dimming ballasts for fluorescent lamps that are capable of operating the lamps below 50% of their rated light output); and screw-base and pin-base compact fluorescent lamps (CFLs) (with the exception of plug-in CFLs longer than 10 inches).

Under the authority of Recovery Act, section 1605(b)(2), the head of the federal department or agency may issue a “determination of inapplicability” (a waiver of the Buy American provisions) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality (“nonavailability”). On November 10, 2009, the Secretary of Energy delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that LED traffic lights, arrows, and crosswalk signals; fluorescent electronic lighting ballasts (with the exception of electronic dimming ballasts for fluorescent lamps that are capable of operating the lamps below 50% of their rated light output); and screw-base and pin-base compact fluorescent lamps (with the exception of plug-in CFLs longer than 10 inches) all qualify for the “nonavailability” determination.

The determination of inapplicability under Recovery Act section 1605 for these three products is based on extensive market research and a thorough investigation of the

domestic manufacturing landscape. This research revealed that these three products are manufactured almost exclusively in China and Mexico.

EERE corresponded with a wide range of lighting industry stakeholders, including the National Electrical Manufacturers Association, three major lighting companies (GE, Osram Sylvania, and Phillips), the IEU-CWA labor union, and many smaller lighting manufacturers, in establishing the domestic nonavailability determinations. The two specific exceptions to these categorical waivers (for electronic dimming ballasts and 10-inch and longer CFLs) are evidence of the very detailed research effort undertaken to support the formulation of these nonavailability determinations.

These determinations are also informed by the large number of inquiries and petitions to EERE from recipients of EERE Recovery Act funds (“grantees”), suppliers, and trade associations – all stating that their individual efforts to locate domestic manufacturers have been unsuccessful.

EERE has also received two specific waiver requests from grantees for LED traffic lights and fluorescent electronic lighting ballasts, and has postponed granting waivers for these individual projects in favor of developing nationwide categorical waivers that would benefit all grantees implementing projects that utilize these manufactured goods.

EERE is operationalizing a strategy that involves collaborating with multiple stakeholders in the manufacturing community to disseminate technical specifications for hard-to-find products to ascertain whether or not there are any domestic manufacturers for these products. This strategy will ensure that all future determinations of nonavailability are developed via a thorough, transparent, and expedited process. However, while this larger strategy is unfolding, it is critical to move forward with the nationwide categorical waivers for these three manufactured goods, where domestic nonavailability has been ascertained and is currently impeding the progress of numerous Recovery Act projects funded by EERE.

These determinations of inapplicability (categorical waivers) apply to all projects using EERE Recovery Act funds for the construction, alteration, maintenance and repair of public buildings or public works. The Assistant Secretary, EERE, reserves the right to revisit and amend these determinations based on new developments or changes in the domestic manufacturing capacity for these three technologies.

The specific products detailed below will be *excluded* from the determinations of inapplicability (i.e. these products will remain subject to the buy American provisions) because some domestic manufacturing capacity does exist.

(1) Electronic dimming ballasts for fluorescent lamps

Electronic dimming ballasts for fluorescent lamps that are capable of operating the lamps below 50% of their rated light output.

(2) Plug-in CFLs longer than 10 inches

CFLs greater than 10 inches in length have a 4-pin base and are rated from 18 to 27 watts. They are available in a range of color temperatures and are used, for example, in facilities, offices, warehouses and display cases. Lengths range from 10.5 in (266.7 mm) to 22.5 in (571.5mm), and rated life ranges from 10,000 to 20,000 hours.

(3) Traffic light fixtures

The nationwide categorical waiver for LED traffic lights, arrows, and crosswalk signals covers the LED lights and any adjacent wires and electronic parts necessary for the functionality of the lights themselves; but *excludes* the metal or plastic fixtures (also referred to as the “housing” or “shell”).

In light of the foregoing, and under the authority of section 1605(b)(2) of the Public Law 111-5 and Redelegation Order 00-002-01C, dated November 10, 2009, with respect to Recovery Act projects funded by EERE, I hereby issue a “determination of inapplicability” (a waiver under the Recovery Act Buy American provisions) for LED traffic lights, arrows, and crosswalk signals; fluorescent electronic lighting ballasts (with the exception of electronic dimming ballasts for fluorescent lamps that are capable of operating the lamps below 50% of their rated light output); and screw-base and pin-base compact fluorescent lamps (with the exception of plug-in CFLs longer than 10 inches). Furthermore, I reserve the right to revisit and amend these determinations based on new developments or changes in the domestic manufacturing capacity for these three technologies.

Alternative Bidding Procedures:

An alternative bidding procedure may be employed to justify the use of foreign iron, steel and/or manufactured project. To qualify under this procedure the total project is bid using two alternatives, one based on the use of domestic products and the other, the use of corresponding foreign source steel and/or iron materials.

In accordance with the provisions of Section 103.02 the Contract will be awarded to the lowest responsive and responsible bidder who submits the lowest total bid based on furnishing domestic products unless such total exceeds the lowest total bid based on furnishing foreign products by more than 25 percent, in which case the award will be made to the lowest responsive and responsible bidder furnishing foreign iron, steel and manufactured products based upon furnishing verifiable supportive data. The bidder shall submit a bid based on permanently incorporating only domestic products in the construction of the project. The bidder may also submit a bid for the same proposed contract based on being allowed to permanently incorporate corresponding foreign materials meeting the other contract requirements into the work on the contract. If he chooses to submit such a bid, that alternate bid shall clearly indicate which foreign items will be permanently installed in the work as well as contain prices for all other items listed in the corresponding domestic proposal to complete a total “Foreign” bid.

In the event the contract is awarded to the bidder furnishing foreign materials or items the provision for price adjustment of steel items will be permitted, however, price fluctuations shall use the U.S. Index as stated in the Special Provision for Price Adjustment for Steel. The Contractor must indicate which corresponding eligible steel items he chooses price adjustment to apply. In the event the contract is awarded to a bidder furnishing foreign items and during the life of that contract the Contractor discovers he cannot furnish foreign material as originally anticipated and agreed upon, he shall be responsible to honor the total bid price and furnish such materials meeting the contract requirements from other sources as necessary to complete the work.

In the event the Contractor proposes to furnish "foreign" products and can verify a savings in excess of 25 percent of the overall project cost if bid using domestic materials, the Contractor shall submit a second complete paper bid proposal clearly marked "Foreign" including supportive data supplement on all sheets. Supportive data shall list, but not be limited to, origin of material, best price offer, quantity and complete description of material, mill analysis, evidence or certification of conformance to contract requirements, etc. The "Foreign" bid shall be completed using the best price offer for each corresponding bid item supplying foreign material in the alternative bid and submit the same with the Contractor's "Domestic" bid. The Contractor shall write the word "Foreign" by the bid total shown on Form B-2 showing the total bid amount. The bidder shall also contact the City of Newport News Purchasing Department to inform that he is also submitting an alternate "Foreign" paper bid.

The information listed on the supportive data sheet(s) will be used to provide the basis for verification of the required cost savings. In the event comparison of the prices given, or corrected as provided in Section 103.01 of the Specifications, shows that use of "foreign" iron and steel items does not represent a cost savings exceeding the aforementioned 25 percent, "domestic" iron and/or steel and prices given there for shall be used and the "100 percent Domestic Items Total" shall be the Contractor's bid.

Certification of Compliance:

Where domestic material is supplied, the contractor shall furnish to the Department a certificate of compliance (such as may be LED streetlight fixture manufacturer) that all products supplied to the project except as may be permitted (one-tenth of one percent of the total contract cost or \$2,500, whichever is greater) and permanently incorporated into the work satisfied the domestic requirements herein. This certification shall contain a definitive statement about the origin of all products covered under the provisions of Buy America as stated herein.

Since it is the intent of the City to promote small businesses (SBE), minority businesses (MBE) and women-owned businesses (WBE), you are requested to report the total dollars which will be sub-contracted to each of the business classifications pertaining to this contract. If you should sub-contract with SBE's, MBE's and WBE's, list the dollar figures separately for each general classification.

This will enable the City to track the amount of business the City does with small, minority and women-owned businesses. Without your cooperation it would be very difficult to fully understand the City's performance in this important segment of the market. Indicate your figures below and return this form to the Purchasing Department with your initial bid package.

If you are not sub-contracting, even if you are a S/M/WBE, put zeros in the spaces below.

IFB #2011-3384-2005

Total SBE Dollars to be Sub-contracted \$ _____

Total MBE Dollars to be Sub-contracted \$ _____

Total WBE Dollars to be Sub-contracted \$ _____

EXCEPTION PAGE

EXCEPTIONS:

Bidder must sign the appropriate statement below, as applicable:

() Bidder understands and agrees to all terms, conditions, requirements, and specifications stated herein.

Firm: _____

Signature: _____

() Bidder takes exception to terms, conditions, requirements, or specifications stated herein (Bidder must itemize all exceptions below, and return with this IFB):

Firm: _____

Signature: _____

Bidders should note that any exceptions taken from the stated terms and/or specifications may be cause for their submittal to be deemed "non-responsive", risking the rejection of their submittal.

Payment terms shall be considered in determining the low bidder.

BID RESULTS

Bid results will be made available by visiting our web site:

<http://www.nngov.com/purchasing> or www.demandstar.com

ANTI-COLLUSION CERTIFICATION

The bidder certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same product and that this bid is in all respects bona fide, fair and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. The bidder understands collusive bidding is a violation of Federal law and that any false statement hereunder constitutes a felony and can result in fines, imprisonment, as well as civil damages. The bidder also understands that failure to sign this statement will make the bid non-responsive and unqualified for award.

REFERENCES FOR BIDDERS*

Please provide 3 references with contact person and phone number for lighting fixtures supply contracts occurred within the last 5 years (if applicable, please include 1 municipal government reference):

- 1. _____ tel. # _____
- 2. _____ tel. # _____
- 3. _____ tel. # _____

Please provide 3 lighting fixtures supply contracts that are of similar nature and size that have occurred within the past 5 years (it is requested that at least 2 projects correspond to the above list):

- 1. _____
- 2. _____
- 3. _____

Does your company:

_____ YES _____ NO

1. Company has supplied lighting fixtures for or within the Hampton Roads area.

Locations: _____

*** The City reserves the right to ask for additional information.**

INSTRUCTIONS OF BIDDERS

BIDDER RESPONSIBILITIES:

- A. Affirmative Steps:** Bidders shall take affirmative steps in compliance with the regulations, prior to submission of bids or closing data for receipt of initial bids, to encourage participation in projects by MBEs and WBEs. Such efforts include:
1. Establish and maintain a current solicitation list of minority and female recruitment sources, and assure MBEs and WBEs are solicited once they are identified.
 2. When feasible, segmenting total work requirements to permit maximum MBE/WBE participation, and establish delivery schedules to encourage MBE/WBE participation.
 3. Assuring that MBEs, and WBEs are solicited whenever they are potential sources of Goods or services. This step may include:
 - a. Sending letters or making other personal contact with MBEs, WBEs, private Agencies and state associations (e.g., those who appear on lists prepared by EPA or the recipient and other MBE/WBE known to the Bidder). MBEs/WBEs should be contacted when other potential subcontractors are contacted, within reasonable time prior to bid submission or closing date for receipt of initial bids. Those letters or other contacts should communicate the following:
 - (i) Specific description of the work to be contracted;
 - (ii) How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
 - (iii) Date the quotation is due to the bidder;
 - (iv) Name, address, and phone number of the person in the Bidders firm whom the prospective MBE/WBE subcontractor should contact for additional information.
 - b. Using the services and assistance of the Small Business Administration and the Department of Minority Business Enterprises of the Commonwealth of Virginia.

Affirm.A: Rev. 2/7/97

B. Bidders are requested to demonstrate compliance with MBE/WBE requirements. Demonstration of compliance may include the following information; however, the recipient may specify other methods of demonstrating compliance:

1. Names, addresses, phone number, scope of work, aggregate dollar amount of work for MBE/WBE firms expected to perform on this contract. If none, respond accordingly _____

2. Description of contacts to MBE/WBE firms, including number of contacts, work offered, dates of contact and result of contact. If none, so state. _____

3. Description of contacts of organizations, agencies and associations, which assist MBE/WBE firms, showing the names, person contacted, and date of contact. If none, so State. _____

4. Copies of advertisements for employment showing your firm as advertised to be an Equal Opportunity Employer. (This is a requirement for firms who have received prior governmental contracts valued at \$10,000 or more and have advertised subsequently to that date) _____

C. Successful Bidder should take reasonable affirmative steps to subcontract with MBEs and WBEs whenever additional subcontracting opportunities arise during the performance of the contract.

NEWPORT NEWS LIGHTING UPGRADE BID

This project is funded by American Recovery and Reinvestment Act (ARRA). The program will be administered by Energy, Efficiency, and Conservation Block Grant (EECBG) under the Department of Energy (DOE). Contractors shall comply with all the applicable provisions of the ARRA regulations. Contractor to take special consideration for compliance with the Buy American requirements: the standards identified in the Buy American Act, 41, USG §§10a-10d. This bid shall comply with the procurement requirement set forth by the Code of Federal Regulations 10CFR 600.236.

The project will purchase the complete units of LED streetlight luminaires as stated herein for the upgrade of the City-maintained traditional streetlights.

- The luminaires will be installed on the existing poles by the City staff utilizing the City's equipment as the pledged leverage to the federal fund.
- Existing wiring is to be used where applicable.
- Specifications listed below refer to the minimum requirements regarding light output, structural integrity, and warranty.
- Bidders must submit electronic copy of .ies file in CD(s) for each type of lights being bid.
- Bidders must submit a detailed shop drawing showing both the electric and hardware details for the each type of fixtures.
- The LED luminaires shall be manufactured by a company that has been engaged in LED streetlighting business for a minimum of three years and shall provide references for where its fixtures have been installed and continued to operate in a municipal application for a minimum of one year.

BID ITEM NO. 1

LED LUMINAIRE: COBRAHEAD

Quantity: 53 Units

The luminaires shall be BLD-STR-LWY-2M-HT-C-UL series of Beta LED by RUUD Lighting, or approved equal. The luminaire shall meet the requirements specified below to be considered as equivalent.

GENERAL CONSTRUCTION:

- Luminaire housing components will utilize die-cast aluminum and shall be aesthetically inspired by traditional roadway (cobra-head) fixtures.
- LED panels/arrays and power supply shall be housed in an enclosure with an ingress protection rating minimum of IP65.
- Overall EPA shall be 1.0 square feet or less.
- Total luminaire weight shall not exceed 30 pounds.
- The name of the manufacturer, date of manufacture, model number, input voltage, and input wattage is to be printed and affixed within the luminaire on a suitable plate or decal.
- Housing shall be in silver or in gray color.

MOUNTING:

- Luminaire shall be designed to slip fit a standard mast arm with five (5) degrees of adjustment for leveling and with a 1 ¾” to 2 ¾” inches outside diameter round pipe compliant with ANSI C136.10-1995.

ELECTRICAL:

- Luminaire shall operate in a specific input wattage between 70 to 100 watts.
- LED driver shall operate in a specific drive current between 500mA to 550mA.
- LED source shall have thermal conductive medium.
- Luminaire shall be protected against over-voltage, over-current and short circuit.
- Luminaire shall be factory wired for a voltage supply of 120-277 volt 60Hz nominal line to neutral.
- All wiring connections within the luminaire shall be insulated permanent crimped compression or locking type quick disconnect terminals.
- Luminaire power factor shall be no less than 90%.
- Total Harmonic Distortion (THD) shall not exceed 20%.
- All the electric components shall be U.L. listed.

LIGHTING CHARACTERISTICS:

- Luminaire testing shall be in accordance with IESNA LM-79-08 and LM80-08 conducted by accredited testing lab. Submittals shall include such reports.
- Correlated Color Temperature (CCT) of LED array output shall be between 4,500 – 6,000 degrees Kelvin.
- Initial luminaire efficacy shall be no less than 55 lumens output per input watt.
- Luminaire shall maintain at least 70% (L₇₀) of initially delivered lumen output at 50,000 hours of luminaire operation.
- Luminaire shall be designed for proper LED operation at an ambient temperature range between -10°F to 104°F (-23°C to 40°C).
- LED array Color Rendering Index (CRI) shall be minimum of 65.

PHOTOMETRIC DISTRIBUTION:

- Luminaire distribution classification shall be IES type II Medium Longitudinal Cutoff, or Type III Medium Longitudinal Cutoff.
- Total uplight as defined in IESNA TM-15-07 shall be limited U0 to U1.

WARRANTY:

- Minimum five year warranty required covering defects in material or workmanship for housing, electrical components, and LED arrays.
- The warranty period shall start at the date of shipment.
- The manufacturer shall supply a written confirmation with the warranty terms and the contact information.
- The warranty components or replacement shall be readily available within a normal lead time.

BID ITEM NO. 2A, 2B, 2C

LED LUMINAIRE: POST TOP - GROUP 1

Quantity: 210 Units

The luminaires shall be 2A24/PGL_5/F10/LED70-UNV/DIR5/ style manufactured by Beacon Products, or approved equal. The luminaire shall meet the requirements specified below.

GENERAL CONSTRUCTION:

- Luminaire housing components will utilize die-cast aluminum and shall be aesthetically comparable to the drawing attached in Appendix A.
- The diameter of the globe shall be in the range of 15-20 inches.
- The height of the globe shall be in the range of 30-35 inches measuring from bottom of the housing to the top of the roof excluding the finial height.
- Housing adapter shall have an access door to provide easy access to the electrical compartment and shall match the decorative detail of the housing.
- LED panels/arrays and power supply shall be housed in an enclosure with an ingress protection rating minimum of IP65.
- Overall EPA shall be 2.20 square feet or less.
- Total luminaire weight shall not exceed 60 pounds.
- The globe shall not contain cage or metal roof.
- The name of the manufacturer, date of manufacture, model number, input voltage, and input wattage is to be printed and affixed within the luminaire on a suitable plate or decal.
- The luminaire top shall be finished with a die cast aluminum finial in the same color of the housing.
- Housing color: See Bid Line.

MOUNTING:

- Luminaire shall be supplied with the necessary mounting hardware.
- Luminaire adapter shall slip fit the existing tenons and shall be in size of: See Bid Line
- The adapter shall use fully galvanized stainless steel set screws.

ELECTRICAL:

- Luminaire shall operate in a specific input wattage between 60 to 80 watts.
- LED driver shall operate in a specific drive current between 500mA to 550mA.
- LED source shall have thermal conductive medium.
- Luminaire shall be protected against over-voltage, over-current and short circuit.
- Luminaire shall be factory wired for a voltage supply of 120-277 volt 60Hz nominal line to neutral.
- All wiring connections within the luminaire shall be insulated permanent crimped compression or locking type quick disconnect terminals.
- Luminaire power factor shall be no less than 90%.
- Total Harmonic Distortion (THD) shall not exceed 20%.

LIGHTING CHARECTERSTICS:

- Luminaire testing shall be in accordance with IESNA LM-79-08 and LM80-08 conducted by accredited testing lab. Submittals shall include such reports.
- Correlated Color Temperature (CCT) of LED array output shall be between 4,500 to 6,000 degrees Kelvin.
- Initial luminaire efficacy shall be no less than 50 lumens output per input watt.
- Luminaire shall maintain at least 70% (L₇₀) of initially delivered lumen output at 50,000 hours of luminaire operation.
- Luminaire shall be designed for proper LED operation at an ambient temperature range between -10°F to 104°F (-23°C to 40°C).
- LED array Color Rendering Index (CRI) shall be minimum of 65.

PHOTOMETRIC DISTRIBUTION:

- The lens of the globe shall be refractive acrylic, or refractive polycarbonate prism.
- The roof of the globe shall be reflective acrylic, or reflective polycarbonate to provide dark sky approved lighting distribution.
- Luminaire distribution classification shall be IES type Type V.
- Total uplight as defined in IESNA TM-15-07 shall be limited U0 to U2.

WARRANTY:

- Minimum five year warranty required covering defects in material or workmanship for housing, electrical components, and LED arrays.
- The warranty period shall start at the date of shipment.
- The manufacturer shall supply written confirmation with the warranty terms and the contact information.
- The warranty components or replacement shall be readily available within a normal lead time.

BID LINE:

Item	Color	Adapter Size (Outer Diameter and Height)	Quantity
2A	Dark Green (COLOR FEDERAL GREEN 36G 12 A, or Equivalent)	3 ¾" X 3"	55
2B	Brown (QD ENAMEL TRAFFIC BROWN 12C, YB, YF, Y20H, 2Y22I, YW, or Equivalent)	3 ¾" X 3"	35
2C	Brown (QD ENAMEL TRAFFIC BROWN 12C, YB, YF, Y20H, 2Y22I, YW, or Equivalent)	4 ¼" X 5"	120

BID ITEM NO. 3

LED LUMINAIRE: POST TOP - GROUP 2

Quantity: 100 Units

GENERAL CONSTRUCTION:

- Luminaire housing components will utilize die-cast aluminum and shall be aesthetically comparable to the drawing attached in Appendix B.
- The diameter of the globe shall be in the range of 15-20 inches.
- The height of the globe shall be in the range of 30-35 inches measuring from bottom of the housing to the top of the roof excluding the finial height.
- Housing adapter shall have an access door to provide easy access to the electrical compartment and shall match the decorative detail of the housing.
- LED panels/arrays and power supply shall be housed in an enclosure with an ingress protection rating minimum of IP65.
- Overall EPA shall be 2.20 square feet or less.
- Total luminaire weight shall not exceed 60 pounds.
- The name of the manufacturer, date of manufacture, model number, input voltage, and input wattage is to be printed and affixed within the luminaire on a suitable plate or decal.
- Housing shall be made of die cast aluminum and shall be black in color.
- Luminaire shall have die cast decorative band and cage painted black as in housing and secured with stainless steel screws.
- Roof shall be made of non-painted spun copper, or copper washed, or equivalent.
- Luminaire top shall be finished with a die cast aluminum finial painted in same color as in housing.

MOUNTING:

- Luminaire shall be supplied with the necessary mounting hardware.
- Luminaire adapter shall slip fit the existing tenons and shall be in size of 3 ½” outer diameter and 3” high.
- The adapter shall use fully galvanized stainless steel set screws.

ELECTRICAL:

- Luminaire shall operate in a specific input wattage between 60 to 80 watts.
- LED driver shall operate in a specific drive current between 500mA to 550mA.
- LED source shall have thermal conductive medium.
- Luminaire shall be protected against over-voltage, over-current and short circuit.
- Luminaire shall be factory wired for a voltage supply of 120-277 volt 60Hz nominal line to neutral.
- All wiring connections within the luminaire shall be insulated permanent crimped compression or locking type quick disconnect terminals.
- Luminaire power factor shall be no less than 90%.
- Total Harmonic Distortion (THD) shall not exceed 20%.

LIGHTING CHARACTERISTICS:

- Luminaire testing shall be in accordance with IESNA LM-79-08 and LM80-08 conducted by accredited testing lab. Submittals shall include such reports.
- Correlated Color Temperature (CCT) of LED array output shall be between 4,500 to 6,000 degrees Kelvin.
- Initial luminaire efficacy shall be no less than 50 lumens output per input watt.
- Luminaire shall maintain at least 70% (L₇₀) of initially delivered lumen output at 50,000 hours of luminaire operation.
- Luminaire shall be designed for proper LED operation at an ambient temperature range between -10°F to 104°F (-23°C to 40°C).
- LED array Color Rendering Index (CRI) shall be minimum of 65.

PHOTOMETRIC DISTRIBUTION:

- The lens of the globe shall be refractive acrylic, or refractive polycarbonate prism to provide dark sky approved lighting distribution.
- Luminaire distribution classification shall be IES type Type V.
- Total uplight as defined in IESNA TM-15-07 shall be limited U0 to U2.

WARRANTY:

- Minimum five year warranty required covering defects in material or workmanship for housing, electrical components, and LED arrays.
- The warranty period shall start at the date of shipment.
- The manufacturer shall supply written confirmation with the warranty terms and the contact information.
- The warranty components or replacement shall be readily available within a normal lead time.

NEWPORT NEWS LIGHTING UPGRADE

**Supply of complete units of LED luminaires as specified on this bid document:
Bid Price**

Item	Description	Quantity	Unit	Unit Price	Total
1.	Cobrahead Luminaire	53	EA	_____	_____
2A.	Post Top – Group 1*	55	EA	_____	_____
2B.	Post Top – Group 1*	35	EA	_____	_____
2C.	Post Top – Group 1*	120	EA	_____	_____
3.	Post Top – Group 2**	100	EA	_____	_____
Total Base Bid					=====

Documents, including but not limited to the following, to be submitted with the bid:

- **.IES Files:** Bidders must submit electronic copy of .ies file in CD(s) with the bidder’s company name for each type of lights being bid.
- **Shop Drawings:** Bidders must submit a detailed shop drawing showing both the electric and hardware details for the each type of fixtures.
- **References:** The LED luminaires shall be manufactured by a company that has been engaged in LED streetlighting business for a minimum of three years and shall provide references for where its fixtures have been installed and continued to operate in a municipal application for a minimum of one year.
- **IES Reports:** Luminaire testing shall be in accordance with IESNA LM-79-08 and LM80-08 conducted by accredited testing lab. Submittals shall include such reports.
- **Warranty Confirmation:** The manufacturer shall supply a written confirmation with the warranty terms and the contact information.
- **Proof of ARRA Compliance:** The Contractor shall include in the bid as much proofs as possible of such compliance.

Award shall be based on the Total Base Bid.

Award of the contract shall be in accordance with section 2-563 of the City Procurement Code and shall be on the total base bid as shown on this page.

The City reserves the right to award additional quantities at the unit price quoted above.

* Post Top Group 1 details are shown in Appendix A

** Post Top Group 2 details are shown in Appendix B

LIMITS OF PAYMENT

If the bid cost for the project does not exceed available funding for the project, the city will award the contract to the bidder who submits the lowest responsive Bid.

RECEIPT OF ADDENDA:

The following Addenda are acknowledged:

Addendum No. _____, dated _____, ACKNOWLEDGED (initial) _____
Addendum No. _____, dated _____, ACKNOWLEDGED (initial) _____
Addendum No. _____, dated _____, ACKNOWLEDGED (initial) _____
Addendum No. _____, dated _____, ACKNOWLEDGED (initial) _____

TIME OF COMPLETION:

Items 1, 2A, and 2B shall be delivered within forty-five (45) calendar days from Approval of Shop Drawing. Supply of items 2C and 3 included in the Bid Price shall be made within Ninety (90) calendar days after a Notice-to-Proceed has been issued by the City to the successful bidder.

The City and Contractor recognize that time is of the essence and that the City will suffer financial loss if the Work is not completed by the substantial Completion date required herein. Both parties recognize the delays, expense and damages involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, the City and the Contractor agree, stipulate and fix as liquidated damages if delayed, but not as a penalty, the sum of three hundred dollars (\$300.00) that the contractor shall pay the city for each calendar day or part thereof that expires after the date specified for the Substantial Completion of the Work.

On acceptance of this bid for said work, the undersigned does, or do hereby bind himself, or themselves, to enter into a written contract within ten (10) days of award, with the said Authority, and to perform said work for the consideration above named.

The bidder agrees to complete the entire work within **Ninety (90) calendar days** from date of Notice to Proceed and finally complete the entire work Thirty (30) days thereafter.

State Contractor Registration Number: _____

Business Name: _____

Address: _____

(Street; P.O. Box not acceptable)

(City, State and Zip Code)

By: _____ Date: _____

By: _____ Date: _____

ADDENDA
No.

ACKNOWLEDGED
Initial

IF CONTRACTOR DESIRES TO MAKE ANY ALTERNATIVE BID ON DIFFERENT TYPE OF CONSTRUCTION THAN ONE CALLED FOR, IT SHALL BE ENCLOSED ON A SEPARATE SHEET.

Section B

SPECIAL CONDITIONS

GENERAL:

Unless otherwise specified, the Contractor shall be responsible for supplying all lighting fixtures, accessories, hardware, assembly instruction and manuals as may be required and as specified on the specifications.

PROOF OF ARRA COMPLIANCE:

This project is being funded by the Federal ARRA Grant (Energy Efficiency and Conservation Block Grant) and is subject to compliance with all applicable provisions as stated in the attached special Terms and Conditions. The Contractor takes responsibility for obtaining American made products. The Contractor shall include in the bid as much proofs as possible of such compliance. This can include, but not limited to; receipts for items produced domestically indicating such; a certification from the Contractor or manufacturer verifying that the product was manufactured domestically; detailed and verifiable information supporting the claim that the manufactured goods has undergone substantial transformation in the United States.

Attachments

COORDINATION:

The Contractor shall deliver the herein specified bid items to the city storage facility at Traffic Operations, City of Newport News, 513 Oyster Point Road, Newport News, Virginia, 23602. The Contractor shall coordinate with the City staff at 757-269-2452 giving at least forty-eight hours (weekdays from 7:00AM to 4:00PM) notice in advance.

PROGRESS SCHEDULE:

Submit for review and approval within seven (7) days after Award of the Contract a definite delivery schedule indicating the times (number of days and dates).

INVOICING:

Billing to the City shall be presented on invoice forms in duplicate and must reference the Purchase Order Number, which will be given to the Contractor by a designated representative of the using agency/department, for each transaction. Invoices shall be submitted to Department of Finance and a copy to Department of Engineering, City of Newport News, 2400 Washington Avenue, Newport News, VA 23607.

[Code of Federal Regulations]
[Title 10, Volume 4]
[Revised as of January 1, 2002]
From the U.S. Government Printing Office via GPO Access
[CITE: 10CFR600.236]

[Page 142-148]

TITLE 10--ENERGY

CHAPTER II--DEPARTMENT OF ENERGY--CONTINUED

PART 600--FINANCIAL ASSISTANCE RULES--Table of Contents

Subpart C--Uniform Administrative Requirements for Grants and
Cooperative Agreements to State and Local Governments

Sec. 600.236 Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The

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grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is

not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only--

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be

referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle

and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

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(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 600.236. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ``brand name'' product instead of allowing ``an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be

a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should

be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ``brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed. (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies,

or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 600.236(d)(2)(i) apply.

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(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing

them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type

contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent

practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures

for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of

fair and reasonable compensation. The method, where price is not used as

a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of

costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for

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pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and

minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits,

which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates

in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost

principles (see Sec. 600.422). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications

on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior

to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement

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documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ``brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract

or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review

in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets

these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the

grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ``bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ``performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ``payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

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(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ``Equal Employment Opportunity,''' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ``Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

(All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

[53 FR 8045, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19641, Apr. 19, 1995; 61 FR 7166, Feb. 26, 1996]

**SPECIAL TERMS AND CONDITIONS FOR THE ENERGY EFFICIENCY AND CONSERVATION
BLOCK GRANT PROGRAM – FORMULA GRANTS**

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**SPECIAL TERMS AND CONDITIONS FOR THE ENERGY EFFICIENCY AND
CONSERVATION BLOCK GRANT PROGRAM – FORMULA GRANTS**

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 Grant and Cooperative Agreement cover page, plus the following:

a. Special terms and conditions.

b. Attachments:

<u>Attachment No.</u>	<u>Title</u>
1	Intellectual Property Provisions
2	Project Activity Worksheet(s) are attached. If the Worksheet is for the Strategy, the grant will be amended to include additional Worksheets as activities are approved.
3	Federal Assistance Reporting Checklist
4	Budget Pages are attached. For Strategy, the SF-424A is attached, if it was included in the application. The grant will be amended to include additional Budget Pages as activities are approved.
5	Davis-Bacon Act Wage Determination(s), if applicable. For Strategy awards, the Wage Determination will be included when activities are approved.
6	Special Requirements, if applicable

c. Applicable program regulations: Title V, Subtitle E of the Energy Independence Security Act (EISA) of 2007, Public Law 110-140.

d. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov> and if the award is for research and to a university or non-profit, the Research Terms & Conditions and the DOE Agency Specific Requirements at <http://www.nsf.gov/bfa/dias/policy rtc/index.jsp>.

e. Application/proposal as approved by DOE.

f. 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. AWARD PROJECT PERIOD AND BUDGET PERIODS

The Project and Budget Periods for this award are concurrent for a 36-month period as indicated in Item No. 7 of the Assistance Agreement Face Page.

4. STAGED DISBURSEMENT OF FUNDS

[] IF MARKED, THIS TERM IS APPLICABLE

The total funding allocation for this award is shown in Block 13 of the Assistance Agreement Cover Page. However, funds will be released according to a staged disbursement schedule. All funds must be expended within 36 months of the effective date of the award.

For Energy Efficiency Conservation Strategy (EECS) Only awards, funds in the amount of \$ is released to the Recipient to begin work on the EECS. The approved activities are listed in Attachment 2, Project Activity Worksheets. The remaining funds will be released for disbursement upon DOE approval of the EECS and amendment of the award to include the authorized Project Activity Worksheets.

Funds in the amount of \$ is released to the Recipient to begin work on the activities listed in Attachment 2, Project Activity Worksheets. The remaining funds will be released for disbursement upon DOE approval of additional activities and amendment of the award to include the authorized Project Activity Worksheets.

Funds in the amount of \$ is released to the Recipient to begin work on administrative duties pending resolution of problematic issues such as eligibility, technical issues, NEPA, historic preservation, budgetary items, or similar issues. The remaining funds will be released upon successful resolution of these issues and amendment of the award.

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

IF MARKED, THIS TERM DOES NOT APPLY – SEE ATTACHMENT 6

- 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 disburse 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 as is administratively feasible to actual disbursements.
- 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/NNSA.
- 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.

6. INCREMENTAL FUNDING AND MAXIMUM OBLIGATION - COEXTENSIVE BUDGET PERIOD AND PROJECT PERIOD

APPLICABLE ONLY TO INCREMENTALLY FUNDED AWARDS.

This award is funded on an incremental basis. The maximum obligation of the DOE/NNSA is limited to the amount shown on the Agreement Face Page. You are not obligated to continue performance of the project beyond the total amount obligated and your pro rata share of the project costs, if cost sharing is required. Additional funding is contingent upon the availability of appropriated funds and substantial progress towards meeting the objectives of the award.

7. COST SHARING FFRDC'S NOT INVOLVED

APPLICABLE ONLY IF COST SHARING IS INCLUDED IN THE AWARD.

- a. Total Estimated Project Cost is the sum of the Government share and Recipient share of the estimated

project costs. The Recipient's cost share must come from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award, you agree that you are liable for your percentage share of total allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion. This cost is shared as follows:

Budget Period No.	Budget Period Start	Government Share \$/%	Recipient Share \$/%	Total Estimated Cost
1	09/28/2009	\$1,757,300	\$91,747	\$1,849,047
Total Project		\$1,757,300	\$91,747	\$1,849,047

- b. If you discover that you may be unable to provide cost sharing of at least the amount identified in paragraph a of this article, you should immediately provide written notification to the DOE Award Administrator indicating whether you will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost sharing will be secured.
- c. You must maintain records of all project costs that you claim as cost sharing, including in-kind costs, as well as records of costs to be paid by DOE/NNSA. Such records are subject to audit.
- d. Failure to provide the cost sharing required by this Article may result in the subsequent recovery by DOE/NNSA of some or all the funds provided under the award.

8. REBUDGETING AND RECOVERY OF INDIRECT COSTS

THE APPLICABLE TERM IS MARKED BELOW.

REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

- a. If actual allowable indirect costs and fringe benefits are less than those budgeted and funded under the award, you 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, indirect, fringe benefits), is less than the total costs reimbursed, you must refund the difference.
- b. Recipients are expected to manage their indirect costs and fringe benefits. DOE will not amend an award solely to provide additional funds for changes in indirect costs and fringe benefits. DOE recognizes that the inability to obtain full reimbursement for indirect costs and fringe benefits means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

REBUDGETING AND RECOVERY OF INDIRECT COSTS – REIMBURSABLE INDIRECT COSTS

- a. If actual allowable indirect costs are less than those budgeted and funded under the award, you 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, you must refund the difference.
- b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.
- c. The budget for this award includes indirect costs, but does not include fringe benefits. Therefore, fringe benefit costs shall not be charged to nor shall reimbursement be requested for

this project nor shall the fringe benefit costs for this project be allocated to any other federally sponsored project. In addition, fringe benefit costs shall not be counted as cost share unless approved by the Contracting Officer.

[] **REBUDGETING AND RECOVERY OF INDIRECT COSTS - INDIRECT COSTS AND FRINGE BENEFITS ARE NOT REIMBURSABLE**

The budget for this award does not include indirect costs or fringe benefits. Therefore, these expenses shall not be charged to nor reimbursement requested for this project nor shall the fringe and indirect costs from this project be allocated to any other federally sponsored project. In addition, indirect costs or fringe benefits shall not be counted as cost share unless approved by the Contracting Officer.

9. CEILING ON ADMINISTRATIVE COSTS

- a. Recipients may not use more than 10 percent of amounts provided under this program, or \$75,000, whichever is greater (EISA Sec 545(b)(3)(A), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA. These costs should be captured and summarized for each activating under the Projected Costs Within Budget: Administration.
- 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 projects, unless approved by the Contracting Officer.

10. LIMITATIONS ON USE OF FUNDS

- a. Recipients may not use more than 20 percent or \$250,000, whichever is greater (EISA Sec 545(b)(3)(B), for the establishment of revolving loan funds.
- b. Recipients may not use more than 20 percent or \$250,000, whichever is greater (EISA Sec 545(b)(3)(C), for subgrants to nongovernmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government.

11. PRE-AWARD COSTS

APPLICABLE ONLY IF COMPLETED BELOW.

You are entitled to reimbursement for preaward costs in the amount of \$[] for the period from [MonthDayYear] to [MonthDayYear] in accordance with your request dated [MonthDayYear] if such costs are allowable in accordance with the applicable Federal cost principles referenced in 10 CFR Part 600.

12. USE OF PROGRAM INCOME - ADDITION

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 use it to further eligible project objectives.

13. STATEMENT OF FEDERAL STEWARDSHIP

DOE/NNSA 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.

14. 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.

15. 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. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).
- c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

16. 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 Federal 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 under Award Number [*Enter the award number*]."

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."

17. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

18. 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 on the Agreement Face 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 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)

19. 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.

20. 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.

21. INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

- a. You shall immediately notify the DOE of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.
- b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.
- c. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines that there are significant deficiencies or concerns with your performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.
- d. Failure of the Recipient to comply with this provision may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

22. 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/NNSA providing either a NEPA clearance or a final NEPA decision regarding this project. Prohibited actions include: Any project activities other than approved and included in Attachment 2 of this award. This restriction does not preclude you from: Activities included in Attachment 2 of this award. 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.

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

23. 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 this Agreement.

24. 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.

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.

C. 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 relation to, the subcontract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

D. 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.

E. 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 grant 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.).

F. Request for Reimbursement

Reserved

G. 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.

H. Information in supporting 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.

I. Availability of Funds

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

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

Applicable if award is to a State Government or an Agency

Certification by Governor -- Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

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

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

K. 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.

25. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT (MAY 2009)

- 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 recipients 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.

26. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO ANY RECOVERY ACT FUNDS FOR CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR OF A PUBLIC BUILDING OR PUBLIC WORK AND THE TOTAL PROJECT VALUE IS ESTIMATED LESS THAN \$7,443,000. THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.

- 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) and (b)(4) of this section and condition.

- (2) This requirement does not apply to the material listed by the Federal Government as follows:

None

[Award official to list applicable excepted materials or indicate "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 valuation 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.

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

THIS AWARD TERM IS APPLICABLE TO ANY RECOVERY ACT FUNDS FOR CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR OF A PUBLIC BUILDING OR PUBLIC WORK WITH A TOTAL PROJECT VALUE OVER \$7,443,000 THAT INVOLVES IRON, STEEL, AND/OR MANUFACTURED GOODS MATERIALS COVERED UNDER INTERNATIONAL AGREEMENTS. THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.

- 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, 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); or
- (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.

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. This obligation shall only apply to projects with an estimated value of \$7,443,000 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

[Award official to list applicable excepted materials or indicate "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.

28. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO RECOVERY ACT PROGRAMS OR ACTIVITIES THAT MAY INVOLVE CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR. THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.

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.

29. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS (MAY 2009)

- 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.

30. DAVIS BACON ACT REQUIREMENTS (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO ARRA AWARDS WHEN WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT TERM IS APPLICABLE. THIS AWARD TERM IS ALSO APPLICABLE TO SUBGRANTS AND CONTRACTS.

Note: Where necessary to make the context of these articles applicable to this award, the term “Contractor” shall mean “Recipient” and the term “Subcontractor” shall mean “Subrecipient or Subcontractor” per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) *Definition.*—“Site of the work”—

(1) Means--

- (i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and
- (ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is—
 - (A) Located in the United States; and
 - (B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

- (i) They are dedicated exclusively, or nearly so, to performance of the award or project; and
- (ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work 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, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

- (2) 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 (e) of this article; 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 period.
 - (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. 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.
 - (4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) 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.
- c. (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award 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 all the following criteria have been met:
- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (ii) The classification is utilized in the area by the construction industry.
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) 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
 Employment Standards Administration
 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.

- (3) 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 of the Wage and Hour Division 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.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the

classification under this award from the first day on which work is performed in the classification.

- (d) Whenever the minimum wage rate prescribed in the award 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.
- (e) 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.

Rates of Wages

The minimum wages to be paid laborers and mechanics under this award involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to this award. These wage rates are minimum rates and are not intended to represent the actual wage rates that the Contractor may have to pay.

Payrolls and Basic Records

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. 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 paragraph (d) of the article entitled Davis-Bacon Act, 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.
- (b) (1) The Contractor shall submit weekly for each week in which any award work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this article. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the --

Superintendent of Documents U.S. Government Printing Office Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

- (2) 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 award and shall certify --
 - (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this article and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the

award 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 the Regulations, 29 CFR Part 3; and

- (iii) 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 award.
- (3) 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 subparagraph (b)(2) of this article.
- (4) The falsification of any of the certifications in this article 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.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this article available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. 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.

Withholding of Funds

The Contracting Officer shall, upon his or her 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 award or any other Federal award with the same Prime Contractor, or any other federally assisted award 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 award. 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, all or part of the wages required by the award, the Contracting Officer may, after written notice to the Contractor, 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.

Apprentices and Trainees

- (a) Apprentices.
 - (1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—
 - (i) 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 and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
 - (ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
 - (2) 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.

- (3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this article, shall be paid not less than the applicable 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.
- (4) 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 journeyman hourly rate specified in the applicable wage determination.
- (5) 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.
- (6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, 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.

(b) Trainees.

- (1) 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, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.
- (2) 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 in 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 in 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 OATELS shall be paid not less than the applicable wage rate in 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 in the wage determination for the work actually performed.
- (3) In the event OATELS 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.

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

Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this award.

Subcontracts (Labor Standards)

- (a) Definition. "Construction, alteration or repair," as used in this article means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
 - (2) Painting and decorating;
 - (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
 - (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the article entitled Davis Bacon Act of this award, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and
 - (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the Davis-Bacon Act article, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the Davis Bacon Act article, in the "site of the work" definition).
- (b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the articles entitled—
- (1) Davis-Bacon Act;
 - (2) Contract Work Hours and Safety Standards Act -- Overtime Compensation (if the article is included in this award);
 - (3) Apprentices and Trainees;
 - (4) Payrolls and Basic Records;
 - (5) Compliance with Copeland Act Requirements;
 - (6) Withholding of Funds;
 - (7) Subcontracts (Labor Standards);
 - (8) Contract Termination – Debarment;
 - (9) Disputes Concerning Labor Standards;

- (10) Compliance with Davis-Bacon and Related Act Regulations; and
- (11) Certification of Eligibility.
- (c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the award articles cited in paragraph (b).
- (d) (1) Within 14 days after issuance of the award, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the articles set forth in paragraph (b) of this article have been included in the subcontract.

Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.
- (e) The Contractor shall insert the substance of this article, including this paragraph (e) in all subcontracts for construction within the United States.

Contract Termination -- Debarment

A breach of the award articles entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act -- Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the whole award or in part for the Recovery Act covered work only, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this award.

Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes and Appeals as defined in 10 CFR 600.22. Disputes within the meaning of this article include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Certification of Eligibility

- (a) By entering into this award, 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 awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this award shall be subcontracted to any person or firm ineligible for award of a Government award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work

under this award must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the award. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

31. HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the Recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

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

ATTACHMENT 1 – INTELLECTUAL PROPERTY PROVISIONS

**Intellectual Property Provisions (NRD-1003)
Nonresearch and Development**

Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

600.136 Intangible property.

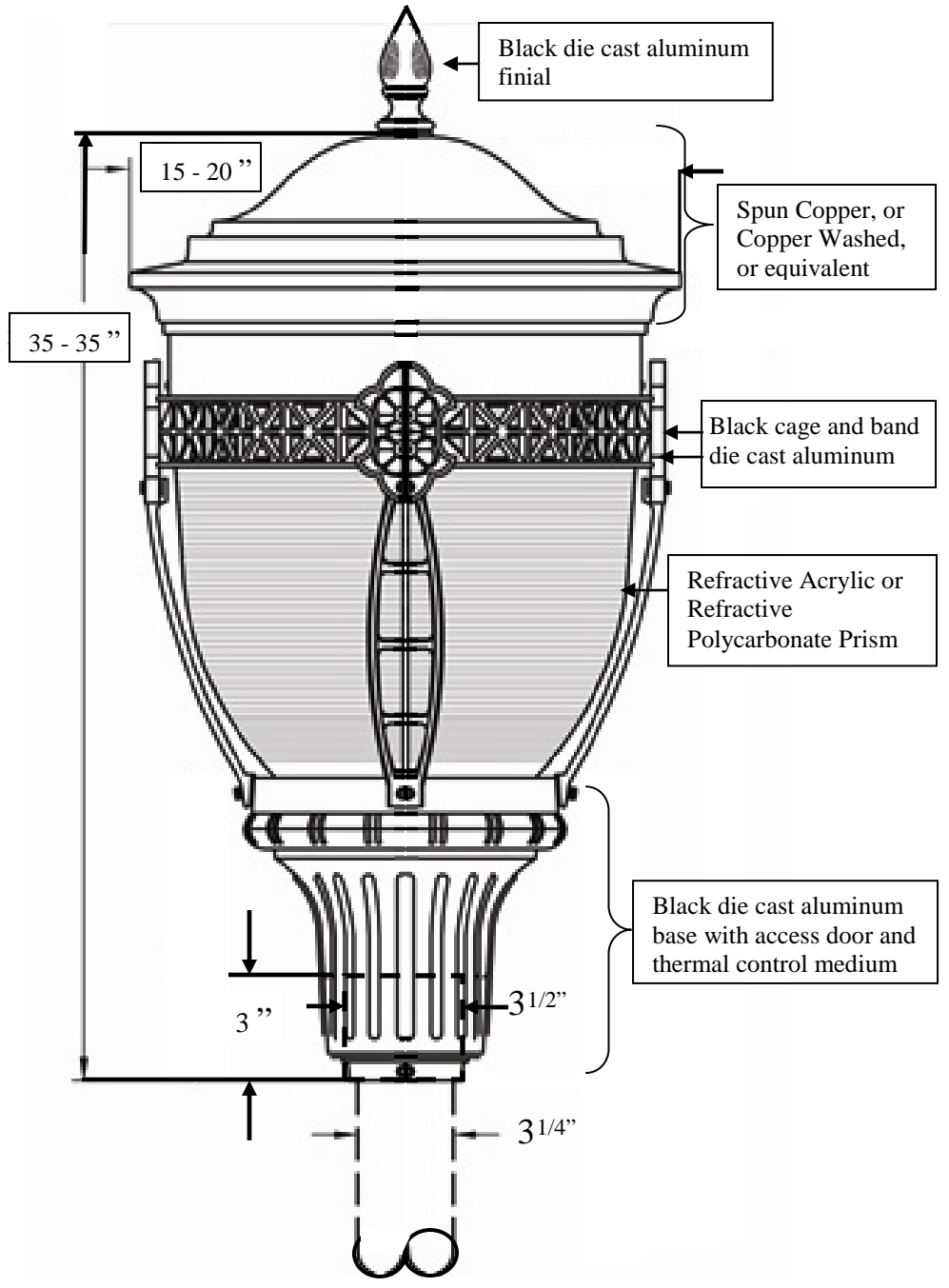
(a) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) DOE has the right to:

- (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) In addition, in response to a Freedom of Information act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect the costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

APPENDIX B
(Fixture Details: Post Top - Group 2)



APPENDIX A

(Fixture Details: Post Top - Group 1)

