

**ADDITIONAL INFORMATION
REGARDING
CONTRACTS 13 & 14**

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PROVISIONS**

ATTACHMENT 2

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From 10 CFR 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 sub-grantees will follow paragraphs (b) through (i) in this section.

Note: 600.236 (i)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

10 CFR 600.236 -- <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

From 10 CFR 600.237-Subgrants

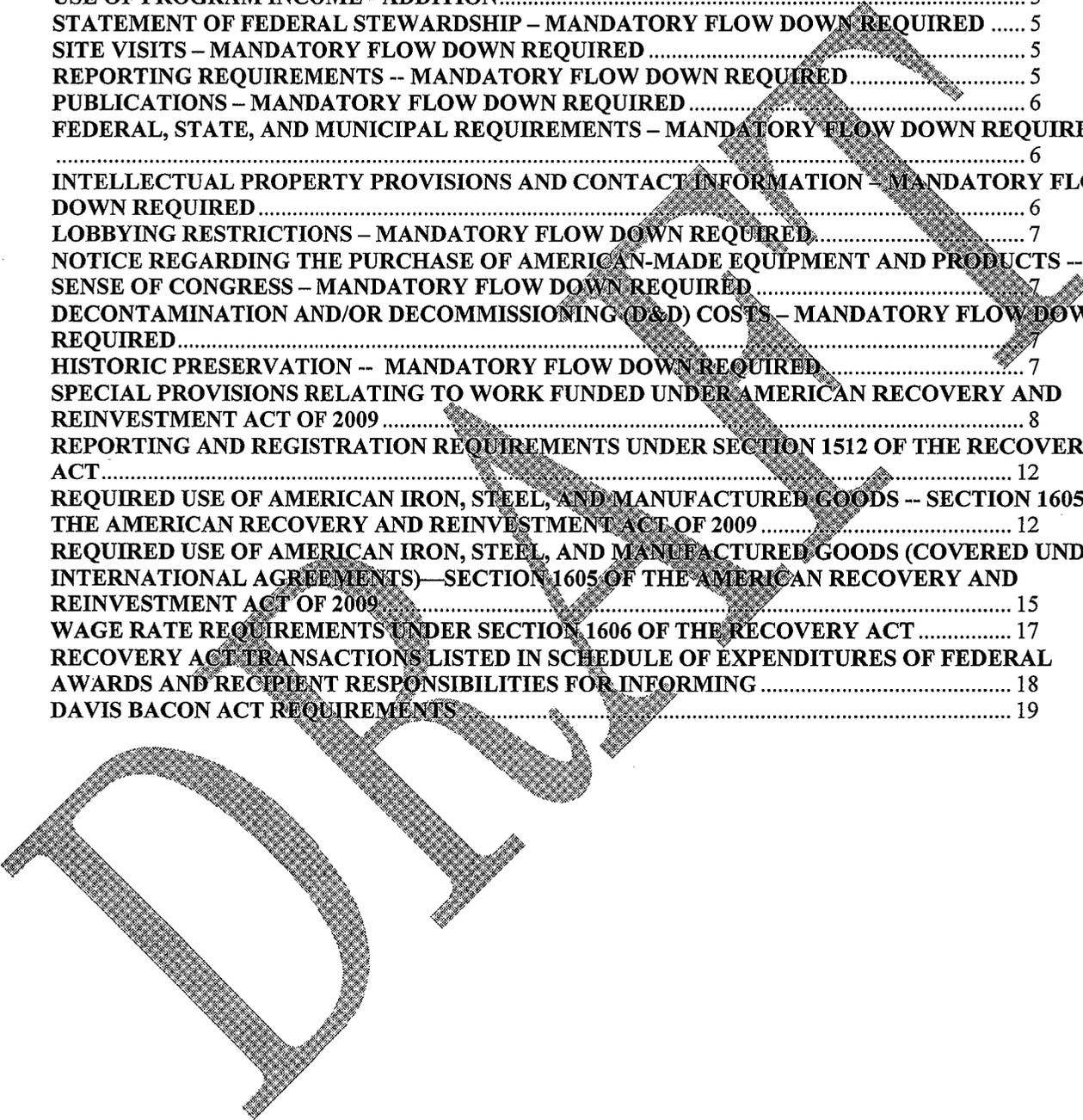
Retention and Access Requirements for Records

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies (refer state to 10 CFR 600.221(c)).

10 CFR 60.221(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

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SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS

RESOLUTION OF CONFLICTING CONDITIONS – MANDATORY FLOW DOWN REQUIRED

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.

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:

Attachment No.	Title
1	Intellectual Property Provisions
2	Federal Assistance Reporting Checklist
3	Budget Pages
4	State Annual File
5	State Master File
6	Wage Determination

- c. Applicable program regulations [*Specify*][*Date*]
- 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.

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

- a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.
- b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you 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.

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.

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

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.

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.

STATEMENT OF FEDERAL STEWARDSHIP - MANDATORY FLOW DOWN REQUIRED

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

SITE VISITS - MANDATORY FLOW DOWN REQUIRED

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.

REPORTING REQUIREMENTS -- MANDATORY FLOW DOWN REQUIRED

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.

PUBLICATIONS – MANDATORY FLOW DOWN REQUIRED

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 DE-EE0000095

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."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS – MANDATORY FLOW DOWN REQUIRED

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

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION – MANDATORY FLOW DOWN REQUIRED

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)

LOBBYING RESTRICTIONS – MANDATORY FLOW DOWN REQUIRED

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.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS – MANDATORY FLOW DOWN REQUIRED

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.

DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS – MANDATORY FLOW DOWN REQUIRED

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.

HISTORIC PRESERVATION -- MANDATORY FLOW DOWN REQUIRED

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

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

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

Prescription: This clause must be included in all grants, cooperative agreements and TIAs (new or amended) when funds appropriated under the Recovery Act are obligated to the agreement.

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Preamble

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

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

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

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

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

Definitions

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

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

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

Special Provisions

A. Flow Down Requirement

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

B. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions 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.

E. Publication

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

Notice of Restriction on Disclosure and Use of Data

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

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

F. Protecting State and Local Government and Contractor Whistleblowers.

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

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

G. Request for Reimbursement (this version is included in WAP/SEP awards with states)

RESERVED

H. False Claims Act

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

I. Information in 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.

J. Availability of Funds

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

Prescription: The following award term shall be used to implement the recipient reporting and registration requirements in the Recovery Act section 1512.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

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

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

(c) Recipients and their first-tier 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.

Prescription: When awarding 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, the agency shall use this award term.

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

(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:

[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 evaluation of the request, including--

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

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

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

[Include other applicable supporting information.]

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

Prescription: When awarding 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, the agency shall use this award term.

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

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

Designated country—(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, 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:

[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.]*

Prescription: When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use this award term.

WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

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

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

contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

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

Prescription: The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures.

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

(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.

Prescription: Include for ARRA awards when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT article is used.

DAVIS BACON ACT REQUIREMENTS

A. Definitions. For purposes of this term, the Contract Work Hours and Safety Standards Act term, and the Recipient Functions term, the following definitions are applicable:

(1) *Award* means the Award by the Department of Energy (DOE) to a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Subrecipients, Contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act.

(2) "*Construction, alteration or repair*" means all types of work done by laborers and mechanics employed by the Subrecipient, construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(a) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(b) Painting and decorating; or

(c) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.

(3) *Contract* means a written procurement contract executed by a Subrecipient for the acquisition of property and services for construction, alteration, and repair under a Subaward. For purposes of these terms, a Contract shall include subcontracts and lower-tier subcontracts under the Contract.

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

(5) *Contractor* means an entity that enters into a Contract. For purposes of these terms, Contractor shall include subcontractors and lower-tier subcontractors.

(6) *Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant directly from the Federal Government. The term includes the State that receives an Award from DOE and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(7) "*Site of the work*"—

(a) Means—

(i) The physical place or places where the construction called for in the Award, Subaward, or Contract will remain when work on it is completed; and

(ii) Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the project;

(b) Except as provided in paragraph (c) of this definition, the site of the work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(1) They are dedicated exclusively, or nearly so, to performance of the project; and

(2) They are adjacent or virtually adjacent to the site of the work as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition; and

(c) 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 contract or 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 as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition, 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 an Award, Subaward, or Contract.

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

(9) *Subrecipient* means a non-Federal entity that expends Federal awards received from a pass-through entity [Recipient] to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. The term includes a Community Action Agency (CAA), local agency, or other entity to which a Subaward under the Award is made by a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the DBA work performed by all laborers and mechanics employed by contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant of the Recovery Act.

B. Davis-Bacon Act

(1)(a) 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 to the Subaward or Contract and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Recipient, a Subrecipient, or Contractor and such laborers and mechanics.

(i) Applicable to Recipient Only: Prior to the issuance of the Subaward or Contract, the Recipient shall notify the Contracting Officer of the site of the work in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(ii) If the Subaward or Contract is or has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph B(4) below; 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.

(c) 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 paragraph 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.

(d) The wage determination (including any additional classifications and wage rates conformed under paragraph B(2) of this term) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and Contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(a) 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 Subaward or Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when 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.

(b) If the Subrecipient (and Contractor, when applicable) and the laborers and mechanics to be employed in the classification (if known), or their representatives agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of this agreement. If the Contracting Officer agrees with 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.

(c) In the event the Subrecipient (and Contractor, when applicable), and the laborers or mechanics to be employed in the classification, or their representatives, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of the disagreement. 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.

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs B(2)(b) or B(2)(c) of this Term shall be paid to all workers performing work in the classification under the Award, Subaward, or Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Award, Subaward, or Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient and 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.

(4) If the Subrecipient or Contractor does not make payments to a trustee or other third person, the Subrecipient or 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 Subrecipient or Contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient or Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

C. Rates of Wages

(1) The minimum wages to be paid laborers and mechanics under the Subaward or Contract 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 the Award, Subaward, or Contract.

(2) If the Subaward or Contract has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

D. Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the Recipient, Subrecipient and 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 (4) of the provision 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 Subrecipient or 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. The Subrecipient or Contractor 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.

(2)(a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Subrecipient. The Subrecipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Recipient. The Recipient shall submit weekly for each week in which any Subaward or

Contract 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 D(1) of this Term, except that the full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(b) The Recipient is responsible for the ensuring that all Subrecipients and Contractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this Term. The Subrecipient is responsible for ensuring all Contractors, including lower tier subcontractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this term. Subrecipients and Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request for transmission to the Contracting Officer, the Recipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The Recipient shall also obtain and provide the full social security number and current address of each covered worker upon request by the Contracting Officer or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Recipient to require a Subrecipient or Contractor to provide addresses and social security numbers to the Recipient for its own records, without weekly submission to the Contracting Officer.

(c) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Recipient, Subrecipient or Contractor or his or her agent who pays or supervises the payment of the persons employed under the Subaward or Contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph D(2)(a) of this Term, the appropriate information is being maintained under paragraph D(1) of this Term, and that such information is correct and complete;

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

(d) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph D(2)(c) of this Term.

(e) The falsification of any of the certifications in Paragraph D, Payrolls and Basic Records, of this Term may subject the Recipient, Subrecipient or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Recipient, Subrecipient, or Contractor shall make the records required under paragraph D(1) of this Term available for inspection, copying, or transcription by the Contracting Officer, authorized representatives of the Contracting Officer, or the Department of Labor. The Subrecipient or Contractor shall permit the Contracting Officer, authorized representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Recipient, Subrecipient, or Contractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Recipient, Subrecipient, or Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

E. Withholding of Funds

(1) The DOE Contracting Officer shall, upon his or her or its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Recipient or any other contract or Federal Award with the same Recipient, on this or any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Recipient 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 Subrecipient or a Contractor the full amount of wages required by the Award or Subaward or a Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Award or Subaward or a Contract, the Contracting Officer may, after written notice to the Recipient 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.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from any Subrecipient or 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 Subrecipient or Contractor the full amount of wages required by the Subaward or Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Subaward or Contract, the Recipient may, after written notice to the Subrecipient or 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 or the Government may cause the suspension of any further payment under any other contract or Federal award with the same Subrecipient or Contractor, on any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Subrecipient or Contractor.

F. Apprentices and Trainees

(1) Apprentices.

(a) 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.

(b) 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 Subrecipient or Contractor as to the entire work force under the registered program.

(c) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph F(1) of this Term, 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.

(d) Where a Subrecipient or 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 Subrecipient's or Contractor'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.

(e) 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.

(f) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Subrecipient or 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.

(2) Trainees.

(a) 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 (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(b) 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/training 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.

(c) In the event OATELS withdraws approval of a training program, the Subrecipient or 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.

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

G. Compliance with Copeland Act Requirements

The Recipient, Subrecipient or Contractor shall comply with the requirements of 29 CFR Part 3 which are hereby incorporated by reference in the Award, Subaward or Contract.

H. Subawards and Contracts

(1) The Recipient, the Subrecipient and Contractor shall insert in the Subaward or any Contracts this Term entitled "Davis Bacon Act Requirements" and such other terms as the Contracting Officer may require. The Recipient shall be responsible for ensuring compliance by any Subrecipient or Contractor with all of the requirements contained in this Term. The Subrecipient shall be responsible for the compliance by Contractor with all of the requirements contained in this Term.

(2) Within 14 days after issuance of a Subaward, the Recipient shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each

Subaward and Contract for construction within the United States, including the Subrecipient's and Contractor's signed and dated acknowledgment that this Term) has been included in the Subaward and any Contracts. The SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413.e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413.e.pdf). Within 14 days after issuance of a Contract or lower-tier subcontract, the Subrecipient shall deliver to the Recipient a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Contract and lower-tier subcontract for construction within the United States, including the Contractor and lower-tier subcontractor's signed and dated acknowledgment that this Term has been included in any Contract and lower-tier subcontracts. SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413.e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413.e.pdf). The Recipient shall immediately provide to the DOE Contracting Officer the completed Standard Forms (SF) 1413.

I. Contract Termination—Debarment

A breach of these provisions may be grounds for termination of the Award, Subaward, or Contract and for debarment as a Contractor or subcontractor as provided in 29 CFR 5.12.

J. 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 the Award, Subaward or Contract.

K. 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 shall not be subject to any other dispute provision that may be contained in the Award, Subaward, and Contract. Disputes within the meaning of this Term include disputes between the Recipient, Subrecipient (including any Contractor) and the Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

L. Certification of Eligibility.

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

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

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

M. Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under an Award, Subaward or Contract must be submitted for approval in writing by the head of the federal 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, Subaward or Contract. Any amount paid by the Subrecipient or Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Subrecipient or Contractor and shall not be reimbursed by the Recipient or Subrecipient. If the Government refuses to authorize the use of the overtime, the Subrecipient or Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

Contract Work Hours and Safety Standards Act

This Term entitled "Contract Work Hours and Safety Standards Act (CWHSSA)" shall apply to any Subaward or Contract in an amount in excess of \$100,000. As used in this CWHSSA Term, the terms laborers and mechanics include watchmen and guards.

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

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

C. Withholding for unpaid wages and liquidated damages.

(1) The DOE Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Recipient on this or any other Federal Award or Federal contract with the same Recipient on any other federally-assisted Award or contract subject to the CWHSSA, which is held by the same Recipient such sums as may be determined to be necessary to satisfy any liabilities of such Recipient for unpaid wages and liquidated damages as provided in the term set forth in CWHSSA, paragraph B of this Term.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause from any moneys payable on account of work performed by the Subrecipient or Contractor on this or any other federally assisted subaward or contract subject to the CWHSSA, which is held by the same Subrecipient or Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Subrecipient or Contractor for unpaid wages and liquidated damages as provided in term set forth in CWHSSA, paragraph B of this Term.

D. Subcontracts. The Subrecipient shall insert in a Contract and a Contractor shall insert in any lower tier subcontracts, the terms set forth in these CWHSSA paragraphs (A) through (D) and also a provision requiring the Contractors to include this CWHSSA Term in any lower tier subcontracts. The Recipient shall be responsible for compliance by any Subrecipient or Contractor, with the CWHSSA paragraphs A through D. The Subrecipient shall be responsible for compliance by any Contractor (including lower-tier subcontractors).

E. The Subrecipient or Contractor shall maintain payrolls and basic payrolls in accordance with Davis-Bacon Act Requirements term, for all laborers and mechanics, including guards and watchmen working on the Subaward or Contracts. These records are subject to the requirements set forth in the Davis Bacon Requirements term.

From 10 CFR 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 sub-grantees will follow paragraphs (b) through (i) in this section.

Note: 600.236 (i)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

10 CFR 600.236 -- <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

From 10 CFR 600.237-Subgrants

Retention and Access Requirements for Records

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies (refer state to 10 CFR 600.221(c)).

10 CFR 60.221(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

DRAFT

PROJECT DESCRIPTION

ATTACHMENT 1

1.0 RESPONSE TO QUESTION A7 — *Description (Provide a detailed summary of the nature and extent of the proposed action.)*

1.1 Project Description

On May 12, 2009, the State of Tennessee filed its application to the U.S. Department of Energy (DOE) to access State Energy Program (SEP) funds under the American Recovery and Reinvestment Act (ARRA) for the Volunteer State Solar Initiative. Approved by DOE, the initiative consists of two integrated projects: The Tennessee Solar Institute at the University of Tennessee (UT) and Oak Ridge National Laboratory (ORNL) in East Tennessee, which will focus on improving the affordability, durability and commercialization of solar products; and the West Tennessee Solar Farm, a five-megawatt multi-acre power generation installation that will serve as a demonstration site for renewable energy, education, economic-development, and other purposes. This attachment focuses primarily on the activities related to the Solar Farm.

The West Tennessee Solar Farm's purpose and goals align directly with the principles of the Recovery Act, DOE Objectives, and goals of the State Energy Program as outlined in Section 4.2 of the SEP-ARRA Guidance. Specifically: Demonstrate the zero-carbon production of electricity on a highly visible and significant scale that will create jobs, educate the public on the benefits of solar energy, encourage future renewable energy interest and investments across Tennessee and throughout the region, reduce GHG emissions, and increase renewable energy generation. Requested funds at the Solar Farm will be used to support the installation of a solar photovoltaic (PV) generation system as well as educational and economic-development initiatives.

Activities associated with the Solar Farm include:

- Design and planning, including NEPA compliance, power purchase agreements, and long-lead equipment purchases, specifically the solar panels;
- Equipment installation;
- Operations and maintenance; and
- Public education and outreach activities.

The Solar Farm will be located in Haywood County, Tennessee, directly on Interstate 40 (I-40) between mileposts 43 and 45. The site borders the interstate on the north side (see Figure 1). As part of the due diligence associated with acquiring the proposed Solar Farm property, Haywood County in coordination with the State contracted a qualified environmental firm to complete a Phase 1 Environmental Site Assessment (ESA), Wetlands Assessment and Threatened and Endangered Species Report. The information generated during this process is available to the NEPA compliance process.

The Solar Farm will be comprised of approximately 22,300 panels and demonstrate a range of commercially available solar techniques and technologies. These likely will include: traditional stationary solar PV technology, solar tracking technology, thin-film solar technology, and energy storage technology. The State intends to contract the development, installation and management of the Farm — specifically, the power-generation system — to UT and/or Genera Energy, LLC, of Knoxville, Tennessee, which has established a track record of success in developing the state's

bioenergy programs. The project will involve some site work prior to installing the solar panels, and will require some shallow subsurface stabilization and a connection to local utility distribution lines.

Under a preliminary agreement, power generated by the Farm will be purchased at a renewable energy price by the federal Tennessee Valley Authority (TVA). TVA will purchase the power through an interconnection agreement with a local distributor, Chickasaw Electric Cooperative.

The Farm will have a significant public education mission that will allow citizens and students to gain firsthand exposure to solar energy production in order to better understand its benefits. Public education activities will occur at a proposed interstate Education and Welcome Center that will be located directly on I-40, adjacent to the Farm. For more information on this component, see below "1.2 Discussion of Connected Actions."

1.2 Discussion of Connected Actions

CEQ NEPA Regulations, 40 CFR § 1508.25(a)1, defines "connected actions" as actions that are "closely related and therefore should be discussed in the same impact statement." Section 1508 further identifies three tests for determining connected actions. According to this Section, actions are connected if they: "(i) Automatically trigger other actions which may require environmental impact statements; (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; [or] (iii) Are interdependent parts of a larger action and depend on the larger action for their justification."

The State is planning an additional action — an interstate Education and Welcome Center — which will be located directly on I-40 adjacent to the Solar Farm. No SEP ARRA funds are being requested for land purchase or construction related to this action, however it qualifies as a connected action under Section 1508 (iii). A complete description of the Education and Welcome Center that will be developed by the Tennessee Department of Transportation (TDOT) can be found in Sections 2.3 and 3.2. In the NETL SEP-ARRA Questionnaire, this activity is referred to as the "Center".

Approximately one mile from the proposed Solar Farm site is the proposed location of a planned industrial megasite. Development of the Solar Farm does not depend on the megasite and there is no link between the power or revenue generated at the Solar Farm with the megasite. The Solar Farm and the megasite projects are not connected under the definition of connected actions above.

1.3 Summary

SEP-ARRA funds are being requested for the following activities:

- Development of the Solar Institute at UT and ORNL;
- Design, installation and connection of the Solar Farm in Haywood County; and
- Public education activities.

SEP-ARRA funds are not being used for:

- Construction of an interstate Education and Welcome Center; or
- Land purchase.

There is one proposed project that should be considered a “connected action” and therefore will be discussed in Section 3.2 of this questionnaire:

- Interstate Education and Welcome Center adjacent to the Solar Farm.

2.0 RESPONSE TO QUESTION A8 — *Summarize the activities necessary to implement the proposed action and list all locations where each activity will occur.*

2.1 Solar Institute

Funds at the Solar Institute will be used primarily to support and optimize technical assistance, technology commercialization, workforce development and other efforts in the solar industry. The Institute will be housed in existing facilities or previously planned state-funded facilities at UT and ORNL.

2.2 Solar Farm

Funds for the Solar Farm, located on I-40 in Haywood County, Tennessee, between mileposts 43 and 45, will be used for the following activities:

- Site preparation for equipment installation;
- Equipment installation; and
- Establishing a power connection to local utility distribution lines.

2.3 Education and Welcome Center

Although not constructed with SEP-ARRA funds, the interstate Education and Welcome Center on I-40 between mileposts 43 and 45 is described herein as a connected action. The Education and Welcome Center will be developed in coordination with the Tennessee Department of Transportation (TDOT) as a pull-through interstate welcome center to minimize traffic disruption in the immediate area and eliminate the need for local access roads into the site. The Center will utilize a “closed system” for transportation access, meaning there will be no connection from I-40 to an adjacent local road system.

The Center will be a facility in which visitors can gather information, observe renewable energy via a solar farm viewing area, and interface with educational/demonstration stations. Additional accommodations, typical of roadside rest areas and welcome centers, will be provided so that travelers may gather information, obtain refreshments, utilize restrooms, and take a break before returning to their travels.

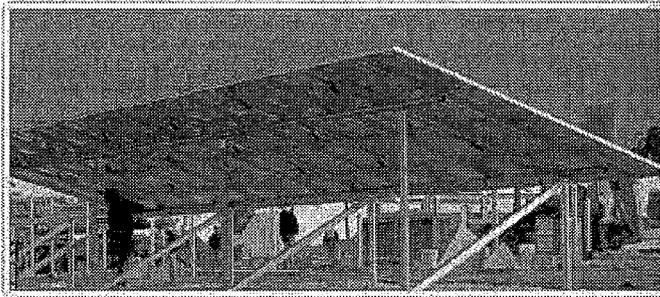
3.0 RESPONSE TO QUESTION A10 — Describe the nature, size, and operation of any structure that will be constructed or installed as part of the proposed action.

3.1 Solar Farm Panels

Design of the Solar Farm has not begun, however we can provide a description of a typical PV field.

A typical field consists of PV modules mounted on open-frame metal structures (steel, aluminum), in rows oriented along an east-west axis. Structures typically are anchored either by poured concrete footings or helical piers driven into soil. The space between the rows will be wide enough for maintenance access (~6 feet). The rows themselves will be about 6 – 10 feet wide. The maximum height of the solar field likely will not exceed 8 feet. See photos below for examples of PV panel structure and configuration.

There will be several inverters mounted in weather-proof metal cabinets distributed throughout the field. Each will be mounted on a concrete slab. Each inverter will be about 10' x 3' x 7' tall.



3.2 Education and Welcome Center

Although not fully designed, available information on the interstate Education and Welcome Center connected action is described below.

- **Location** – The Center will be on the northern side of I-40 between mileposts 43 and 45. Exit 42 (SR 222/Stanton-Sommerville Road) is to the west and Exit 47 (SR

179/Dancyville Road) is to the east. The positioning of the Center will be such that a clear and engaging viewing area is available for the adjacent solar farm facility.

- **Access** – The Center will be a pull-through interstate welcome center, providing for on and off movements from I-40, serving westbound traffic only. The potential exists to provide an additional phased access for eastbound traffic. The Center will utilize a “closed system” for transportation access, meaning there will be no connection from I-40 to an adjacent local road system.
- **Size** – The Center is estimated to be 6,000 to 10,000 square feet in size, depending upon amenities and features. The most recent State of Tennessee Welcome Center/Rest Area is a reconstruction project (Robertson County/Mitchellville on I-65 near the Kentucky line) and is designed with 4,600 square feet of main building area with an additional 2,400 square feet for vending and other storage buildings. The main building for the Solar Farm Center will be larger at full build-out as a result of additional floor space needs for exhibit areas, overlooks, and multi-purpose rooms.
- **Parking** – An estimated 200 to 250 parking spaces (including trucks) are needed, assuming the visitors have an average stay of one hour for the proposed facility.

The State will take this opportunity to highlight energy efficient, renewable energy, and sustainable building design in keeping with the solar power focal point. For example, it is envisioned that the Center will be constructed to U.S. Green Building Council LEED Certification standards (gold or platinum). Sustainable development ideas that are being considered related to water and sewer needs include:

- Reducing potable water demand by harvesting rainwater and storing it in cisterns.
- Utilizing waterless urinals and self composting toilets. Leachate from the toilets would be distributed in landscaped areas via a sub-surface drip irrigation system. Ten (10) fixtures (urinals and toilets) are estimated for the male facility. For the female facilities, 13 toilets are needed.

Sustainable development elements for handling of stormwater include:

- Installing permeable pavement for all passenger car parking areas;
- Building in swales and depressions in grassed areas to help storm rain water and allow infiltration; and
- Harvesting rainwater through a roof storage system.

Finally, other sustainable design elements may include:

- Eliminating direct-beam illumination leaving the building site;
- Installing a roof garden or light roofing to provide a cooler roof;
- Installing a geothermal field for ground source heat;

- Recycling or salvaging construction waste; and
- Using locally manufactured materials.

For the purposes of NEPA review, other interstate welcome centers comparable to this project have historically met NEPA requirements by obtaining a categorical exclusion (CX). In some cases, an Environmental Assessment (EA) with a finding of no significant impact (FONSI) was needed. Tennessee's most recent experience, the I-65 Welcome Center/Rest Area reconstruction project in Robertson County and the I-26 Welcome Center in Sullivan County met NEPA requirements with a CX.

4.0 RESPONSE TO QUESTION D1d — *Would the proposed project(s) affect any existing body of water?*

No. Topography in the area is very flat. There are no named surface water bodies at the site. There are two unnamed tributaries of Big Muddy Creek (which is located approximately 2 – 3 miles north) that border the proposed Solar Farm site.

It is not anticipated that there will be operations environmental permits related to these tributaries as there is no intention to use or store hazardous material at the site. However it is anticipated that a state storm water permit will be required in the installation phase of the project.

If these two surface water features are regulated under Section 404 of the Clean Water Act, and if the installation design requires altering of these features, it will be necessary to obtain an Aquatic Resource Alteration Permit from TDEC.

There do not appear to be existing tributaries in the general area of the proposed interstate Education and Welcome Center.

5.0 RESPONSE TO QUESTION D3 — *Socioeconomic and Infrastructure Conditions*

5.1 Solar Farm

The site is currently accessed from a local road, Albright Road. Short term, traffic via this road will increase slightly during panel installation. Following installation, plans are to develop a controlled maintenance access to the Farm from the interstate Education and Welcome Center, which will utilize a "closed system" for transportation access from I-40. This will result in no increase in traffic on the local road following installation.

Energy produced by the Farm will be fed to the TVA grid through the local utility distribution lines owned by Chickasaw Electric Cooperative. The connection will occur approximately 1.7 miles west of the Farm site near I-40, Exit 42 (SR 222/Stanton-Somerville Road). Power will be transmitted to that point through buried underground lines that will run along state-owned right-of-way on I-40.

5.2 Education and Welcome Center

TDOT is planning a "closed system" for transportation access from I-40 into the interstate Education and Welcome Center, meaning there will be no connection from the interstate to an adjacent local road system. TDOT will construct ramps from I-40 into and out of the site, using

state-owned right-of-way, as it would do for any pull-through interstate welcome center. The public will not access the Center from local roads.

6.0 RESPONSE TO QUESTION D8f — *Describe any increases in ambient noise levels from construction and operational activities.*

6.1 Solar Farm

Short term, there will be a temporary increase in noise related to machinery used for panel installation. There is no anticipated on-going increase in ambient noise from Solar Farm operations.

6.2 Education and Welcome Center

Short term, there will be a temporary increase in noise due to construction activities. There will be a light increase in on-going ambient noise levels associated with vehicles entering and exiting the interstate Education and Welcome Center.

7.0 RESPONSE TO QUESTION F — *Describe any issues that would generate public controversy regarding the proposed action.*

One resident of an adjoining county has expressed opposition to the Solar Farm. This individual is connected to an organization known as the Tennessee Clean Water Network. Beyond this individual, there is no identified public opposition to the Solar Farm. The project enjoys broad public support from Tennessee's leading environmental coalitions, including Tennessee Conversation Voters, Tennessee Environmental Coalition, and Southern Alliance for Clean Energy. The project also enjoys broad support among individual environmentalists and members of the public in Haywood County. The project has been the subject of news coverage by the local and statewide media. All editorial coverage to date indicates strong support for the project.

In terms of inquiries, the State is aware of a FOIA request submitted for access to the grant application by the individual residing in an adjoining county. Additionally, the State has received open-records requests for the same information from a state lawmaker representing a different area of the state and newspaper reporters covering the project.

Because of the highly visible nature of the Solar Farm, it is the State's intent to afford opportunity for public participation in the NEPA process for the project. The State plans to hold a public information/input meeting as part of any environmental review.

**U.S. DEPARTMENT OF ENERGY
DETERMINATION LETTER**



U.S. Department of Energy

National Energy Technology Laboratory



October 13, 2009

Mr. Ryan Gooch
Energy Policy Director
Tennessee Department of Economic
and Community Development
Wm. Snodgrass TN Tower
312 Rosa Parks Ave. 10th Floor
Nashville, TN 37243-1102

SUBJECT: Individual NEPA Determination under the Recovery Act State Energy Program
Award: DE-EE0000160 with the State of Tennessee

Dear Mr. Gooch:

In accordance with the Special Terms and Conditions Article entitled "NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)," the Tennessee Department of Economic and Community Development (Recipient) submitted information to the Department of Energy (DOE) seeking an individual NEPA determination for the "West Tennessee Solar Farm," project proposed under the Market Title "Volunteer State Solar Initiative."

Based on the information provided by the Recipient, DOE has determined that this project requires preparation of an environmental assessment (EA) to determine whether the project would have potentially significant impacts on the environment. If the EA indicates that there would be no such impacts, DOE may issue a Finding of No Significant Impact (FONSI) and the project could proceed without further NEPA review. If the EA indicates that the project may have significant impacts, an environmental impact statement (EIS) would need to be prepared. In the event DOE issues a FONSI, a discussion will be held with the Recipient regarding any proposed conditions and requirements that DOE is considering for inclusion in the FONSI to mitigate potential environmental impacts. However, DOE retains sole discretion on whether to issue a FONSI, and if so, whether to include any conditions and requirements in it. The Recipient must agree to comply with any such conditions or requirements.

Accordingly, the Recipient is restricted from taking any action on this project using federal funds that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE issuing a FONSI (or, in the event an EIS is needed, a Record of Decision). Prohibited actions include, but are not limited to, demolition of existing buildings, site clearing, ground breaking, construction, and detailed design. This restriction also prohibits the purchasing of any long lead-time equipment with federal funds pending issuance of a FONSI. However, the Recipient may use federal funds to perform any necessary site characterization before issuance of a FONSI.

Preparation of the EA must be paid for by the Recipient from its award or another source of state funds. The EA shall be prepared expeditiously and submitted to DOE so DOE can "make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA." See 10 C.F.R. § 1506.5(b). The EA shall comply with all requirements that would be applicable if DOE were to prepare the EA in order for DOE to take responsibility for the document pursuant to section 1506.5(b) and make a decision regarding issuance of a FONSI. In order to ensure that the EA meets DOE needs and complies with all applicable requirements, you should contact R. Paul Detwiler, the NEPA Compliance Officer for this award, at 412-386-4839 before beginning preparation of the EA.

Should you have any questions or concerns regarding this NEPA determination for the "West Tennessee Solar Farm" project, please contact the Contract Specialist, Sheldon Funk, at 304-285-0204 or the Project Officer, Otis Mills, at 412-386-5890.

Sincerely,



Lisa Kuzniar
Contracting Officer
Acquisitions and Assistance Division

cc: Will Pinkston
Sheldon Funk, DOE Contract Specialist
Otis Mills, DOE Project Officer
R. Paul Detwiler, DOE NEPA Compliance Officer
Award No. DE-EE0000160

**ENVIRONMENTAL
QUESTIONNAIRE FOR NEPA
DETERMINATIONS**

U.S. DEPARTMENT OF ENERGY
NATIONAL ENERGY TECHNOLOGY LABORATORY

**ENVIRONMENTAL QUESTIONNAIRE FOR MAKING
INDIVIDUAL NEPA DETERMINATIONS FOR ACTIVITIES
FUNDED FROM STATE ENERGY PROGRAM GRANTS**

I. BACKGROUND

The Department of Energy's (DOE's) procedures for implementing the National Environmental Policy Act (NEPA) codified at 10 CFR Part 1021 require careful consideration of the potential environmental consequences of all proposed actions early in their planning. DOE must determine at the earliest possible time whether such actions require preparation of an Environmental Assessment, an Environmental Impact Statement, or are categorically excluded from further NEPA review. You must complete this Environmental Questionnaire regarding your proposed action to provide DOE with the information it needs to determine the appropriate level of NEPA review.

II. INSTRUCTIONS

In completing this questionnaire, you must provide specific information regarding the nature of your proposed action, including information on its size, operations, and the types and quantities of air emissions, wastewater discharges, solid wastes, land disturbance, etc. You should identify the location(s) of the proposed action and specifically describe the activities that would occur at that location. In addition, you should submit a copy of your statement of work (SOW) or other description of the proposed activity as it appears in your proposal or application. You should provide all of the information about a single project (including any "connected actions" as that term is defined under NEPA) in one questionnaire. If you are proposing two or more unrelated and distinct actions (e.g., a state or tribe applying for financial assistance for a number of separate energy conservation projects), you should complete a separate questionnaire for each project.

III. QUESTIONNAIRE

A. SUMMARY OF PROPOSED ACTION (Original grant recipient should fill out items 1-4 if it is providing this form to others who are seeking loans or grants from the original recipient – for example, the original recipient is using SEP funds for a revolving loan or grant program.)

1. Original Funding Source: State Energy Program Grant
2. Original Recipient (Name of State, Tribe, Territory, or Other Entity): State of Tennessee
3. Grant Number: EE00150
4. Name of Market Title in the Original Recipient's Grant that Would Fund this Proposal:
Volunteer State Solar Initiative
5. Proposed Action: Establish the West Tennessee Solar Farm
6. Proposer (if not the Original Recipient): State of Tennessee Department of Economic and Community Development
7. Description (Provide a detailed summary of the nature and extent of the proposed action. The electronic form will insert additional space as needed, or use an attachment if more space is needed.): See 1.0 of Attachment 1

8. Summarize the activities necessary to implement the proposed action and list all locations where each activity will occur.

See 2.0 of Attachment 1

9. Does the proposed action involve disturbance of undeveloped land (e.g., forest lands, agriculture fields, grasslands, arid lands, wetlands, coastal areas, etc.).

Yes No If yes, describe nature, extent, and duration of disturbance.

Approximately 20 acres of existing farmland will be used for the West Tennessee Solar Farm

10. Describe the nature, size, and operation of any structure that will be constructed or installed as part of the proposed action.

See 3.0 of Attachment 1

11. Identify major materials and products (if any) that would be produced by the proposed action.

Materials Used (Input)	(Estimate Quantity)	Materials Produced (Output)	(Estimate Quantity)
<input type="checkbox"/> Coal	()	<input checked="" type="checkbox"/> Wastewater	(Center Only)
<input type="checkbox"/> Natural Gas	()	<input type="checkbox"/> Air Emissions	()
<input type="checkbox"/> Oil	()	<input checked="" type="checkbox"/> Solid Waste	(Center Only)
<input checked="" type="checkbox"/> Electricity	(Center Only)	<input type="checkbox"/> Hazardous Waste	()
<input checked="" type="checkbox"/> Water	(Center Only)	<input checked="" type="checkbox"/> Electricity	(Farm - 6-8M kWh)
<input type="checkbox"/> Hazardous Materials	()	<input type="checkbox"/> Other Products - List	
<input type="checkbox"/> Others - List	()		

D. ENVIRONMENTAL IMPACTS

This section asks for information needed to assess the environmental impacts of the proposed action. NEPA requires evaluations of the proposed action's potential impacts on the environment (including land use; energy use; natural, historic, and cultural resources; and pollutants).

1. Land Use

a. Characterize present land use where the proposed action would be located.

- | | | | |
|-----------------------------------|--|--------------------------------------|--|
| <input type="checkbox"/> Urban | <input type="checkbox"/> Industrial | <input type="checkbox"/> Commercial | <input checked="" type="checkbox"/> Agricultural |
| <input type="checkbox"/> Suburban | <input checked="" type="checkbox"/> Rural | <input type="checkbox"/> Residential | <input type="checkbox"/> Research Facilities |
| <input type="checkbox"/> Forest | <input type="checkbox"/> University Campus | <input type="checkbox"/> Other | |

b. Describe construction, development, and operation of the proposed action. See 2.0 and 3.0 of Attachment 1

No construction would be anticipated for this project.

c. Would the proposed action be located in or near a park, monument, wilderness area, or any other area of natural, historical, or cultural significance?

No Yes (describe)

d. Would the proposed project(s) affect any existing body of water?

No Yes (describe) See 4.0 of Attachment 1

e. Would the proposed project(s) be located within or impact a floodplain or wetland?

No Yes (describe) Confirmed by Wetlands Assessment and Threatened and Endangered Species Report

2. Vegetation and Wildlife Resources

a. Identify any State- or Federal-listed endangered or threatened plant or animal species or habitat affected by the proposed action. Confirmed by Wetlands Assessment and Threatened and Endangered Species Report

None

b. Would any threatened or endangered species habitat be affected by the proposed action?
 No Yes (describe) Confirmed by wetlands Assessment and Threatened and Endangered Species Report

c. Describe any impacts that construction activities would have on any other types of sensitive or unique habitats.
 No planned construction No habitats None Impact (describe)

3. Socioeconomic and Infrastructure Conditions

a. Would the proposed action generate increased traffic use of roads through local neighborhoods, urban, or rural areas.
 No Yes (describe) See 5.0 of Attachment 1 for short term impact

b. Would the proposed action require new transportation access (roads, rail, etc.)? Describe location, impacts, costs.
 No Yes (describe) See 5.0 of Attachment 1

c. Would any new transmission lines, pipelines or power line or other right-of-ways be required?
 No Yes (Describe location, voltage, and length of right-of-way)
See 5.0 of Attachment 1

4. Historical/Cultural Resources

a. Describe any historical, archeological, or cultural places in the vicinity of the proposed action; note any sites included on the National Register of Historic Places.
 None (describe)

b. Would construction or operational activities of the proposed action disturb any historical, archeological, or cultural buildings, structures, or sites?
 No planned construction No historic buildings, structures, or sites Yes (describe)

c. Would the proposed action interfere with visual resources (e.g., eliminate scenic views) or alter the present landscape?
 No Yes (describe) Some tree removal will occur, replanting will follow

5. Atmospheric Conditions/Air Quality?

a. Would proposed action require issuance of new or modified air permits to perform project related work and activities?
 No (explain) Yes

b. Would the proposed action emit any pollutants regulated by the National Emissions Standards for Hazardous Air Pollutants (NESHAPS)?
 No (explain) Yes Passive solar does not involve emission to the air

c. Would the proposed action be classified as either a New Source or a major modification to an existing source under the federal Clean Air Act?
 No Yes (describe)

d. Would the proposed action need to comply with the New Source Performance Standards?
 Not applicable No (explain) Yes

e. Would the proposed project(s) be subject to Prevention of Significant Deterioration review?
 Not applicable No (explain) Yes (describe)

6. Hydrologic Conditions/Water Quality

- a. What is the closest body of water to the proposed action's location(s) and what is its distance from these locations. Site? Two unnamed tributaries to Big Muddy Creek border the site; Big Muddy Creek is 2-3 miles downstream
- b. What sources would supply potable and process water for the proposed action? Center - rainwater and local water
- c. Quantify the annual amount of wastewater that would be generated by the proposed action.
 None
 Non-contact cooling water (gallons)
 Process water (gallons)
 Sanitary and/or grey water (center gallons)
 Other -- describe (gallons)
- d. What would be the major components of each type of wastewater (e.g., coal fines)?
Farm - none; Center - sanitary waste water from restrooms
 No wastewater produced
- e. Identify the local treatment facility that would receive wastewater from the proposed action.
Center will use on-site septic system
 No discharges to local treatment facility
- f. Describe how wastewater would be collected and treated.
center will use on-site septic system
- g. Would any run-off or leachates be produced from storage piles or waste disposal sites?
 No Yes (describe sources, nature of flow, and collection techniques)
There are no planned waste storage or disposal units
- h. Would the proposed action require issuance of new or modified water permits for operation or construction?
 No Yes (describe) see 4.0 of Attachment 1
- i. Where would wastewater effluents from the proposed action be discharged? Center will use on-site septic system
 No wastewater produced
- j. Would the proposed action require a permit to discharge effluents into a body of water?
 No Yes (describe water use and effluent impact)
- k. Would a new or modified National Pollutant Discharge Elimination System (NPDES) permit be required?
 No Yes (describe)
- l. Would the proposed action adversely affect the quality or movement of groundwater?
 No Yes (describe)
- m. Would the proposed action use groundwater? If so, how much?
No

7. Solid and Hazardous Wastes

- a. Describe and estimate major non-hazardous solid wastes that would be generated by the proposed action. Nonhazardous solid wastes are defined as any solid, liquid, semi-solid, or contained gaseous material that is discarded or has served its intended purpose, or is a manufacturing or mining by-product (40 CFR 260, Appendix I).
- | | |
|---|-------------------------|
| <input type="checkbox"/> None | Quantity () |
| <input checked="" type="checkbox"/> Municipal solid waste, i.e., paper, plastic, etc. | (<u>Center</u>) |
| <input type="checkbox"/> Coal or coal by-products | () |
| <input type="checkbox"/> Other -- identify | () |

b. Would proposed action require new or modified solid waste and/or hazardous waste related permits to perform project work activities?

No Yes (explain) _____

c. How and where would solid waste disposal be accomplished?

On-site (identify and describe location) Off-site (identify location and describe facility and treatment)
Local landfill

d. How would wastes for disposal be transported? truck

e. Describe and estimate the quantity of hazardous wastes (40 CFR 261.3) that would be generated, used, or stored by the proposed action.

None

f. How would hazardous or toxic waste be collected and stored? N/A

g. If hazardous wastes would require off-site disposal, have arrangements been made with a certified TSD (Treatment, Storage, and Disposal) facility? Identify the TSD facility.

Not required Arrangements not yet made Arrangements made with a certified TSD facility

Name and location of TSD facility: _____

8. Health/Safety Factors

a. Identify hazardous or toxic substances that would be used in the proposed action.

Hazardous or toxic substances that would be used (identify):

N/A

b. What would be the likely impacts of these substances on human health and the environment?

N/A

c. Would there be any potential for workers to be exposed to toxic/hazardous chemicals or wastes?

No Yes (describe) _____

d. Are there any special physical hazards associated with the proposed action?

No Yes (describe) _____

e. Would safety training be necessary for any laboratory, equipment, activities or processes involved with the proposed action?

No

f. Describe any increases in ambient noise levels from construction and operational activities.

Increase in ambient noise level (describe)? _____

g. Would construction result in the removal of natural barriers that act as noise screens?

No construction planned No Yes (describe)

Some tree removal will occur, replanting will follow

9. Environmental Restoration and/or Waste Management

a. Would the proposed action include CERCLA removals or similar actions under RCRA or other authorities, meeting CERCLA cost/time limits?

No Yes (describe) _____

- b. Would the proposed action include siting, construction, and operation of temporary pilot-scale waste collection and treatment facilities or pilot-scale waste stabilization and containment facilities?
 No Yes (describe) _____

REGULATORY COMPLIANCE

1. For the following laws, describe any existing permits, new or modified permits, manifests, responsible authorities or agencies, contacts, etc., that would be required for the proposed action:

- a. Resource Conservation and Recovery Act (RCRA):
 None Required (describe) _____
- b. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA):
 None Required (describe) _____
- c. Toxic Substance Control Act (TSCA):
 None Required (describe) _____
- d. Water Pollution Control Act (WPCA)/Clean Water Act (CAA)/Underground Injection Control Program (UIC):
 None Required (describe) _____
- e. Underground Storage Tank Control Act (UST)
 None Required (describe) _____
- f. Clean Air Act (CAA):
 None Required (describe) _____
- g. Endangered Species Act (ESA):
 None Required (describe) _____
- h. Floodplains and Wetlands Regulations:
 None Required (describe) _____
- i. Fish and Wildlife Coordination Act (FWCA):
 None Required (describe) _____
- j. National Historic Preservation Act (NHPA):
 None Required (describe) _____
- k. Coastal Zone Management Act (CZMA):
 None Required (describe) _____

2. Identify any other environmental laws and regulations (Federal, state, and local) for which compliance would be necessary for this proposed action, and describe the permits, manifests, and contacts that would be required.
N/A

F. DESCRIBE ANY ISSUES THAT WOULD GENERATE PUBLIC CONTROVERSY REGARDING THE PROPOSED ACTION.

Describe: See 7.0 of Attachment 1
 None

G. WOULD THE PROPOSED ACTION PRODUCE ADDITIONAL DEVELOPMENT, OR ARE OTHER MAJOR DEVELOPMENTS PLANNED OR UNDERWAY, IN THE AREA?

No Yes (describe) See 1.2 of Attachment 1

II. SUMMARIZE THE SIGNIFICANT IMPACTS THAT WOULD RESULT FROM THE PROPOSED ACTION.

None (provide supporting detail)

Significant impacts (describe)

[Redacted area]

IV. CERTIFICATION BY PROPOSER

I hereby certify that the information provided herein is current, accurate, and complete as of the date shown immediately below.

DATE: September / 28 / 2009
Month Day Year

SIGNATURE: Ryan Gooch

TYPED NAME: Ryan Gooch

TITLE: Energy Policy Director

ORGANIZATION: Department of Economic and Community Development

V. REVIEW AND APPROVAL BY DOE

I hereby certify that I have reviewed the information provided in this questionnaire, have determined that all questions have been appropriately answered, and judge the responses to be consistent with the efforts proposed. Based on the information in the questionnaire, I conclude the following (check the appropriate box):

- The proposed action falls under one or more of the categorical exclusions (CXes) listed in Appendix A or B of Subpart D of the DOE NEPA Implementing Procedures and would not (1) violate applicable ES&H requirements, (2) require siting of waste TSD or recovery facilities, (3) disturb hazardous substances (excluding naturally occurring petroleum and natural gas), thus producing uncontrolled or unpermitted releases, and (4) adversely affect environmentally sensitive resources.

Additionally, the proposed action (1) would not present any extraordinary circumstances such that the action might have a significant impact upon the human environment, (2) is not connected to other actions with potentially significant impacts, and (3) is not related to other actions with cumulatively significant impacts.

Based on the Environmental Questionnaire and these conclusions, Categorical Exclusion of the proposed action would be appropriate.

- The proposed action does not qualify as a CX as identified in Subpart D of DOE's NEPA Implementing Procedures; therefore, the proposed action may require further documentation in the form of an Environmental Assessment or Environmental Impact Statement.

DOE NEPA Compliance Officer: _____

Date: _____

**U.S. DEPARTMENT OF ENERGY
INFORMATION WORKSHEET**

(Grant Number: EE00160)

State Title: Volunteer State Solar Initiative

1 Market (choose one):

<input type="checkbox"/> Buildings	<input type="checkbox"/> Industry
<input checked="" type="checkbox"/> Electric Power and Renewable Energy	<input type="checkbox"/> Policy, Planning and Energy Security
<input type="checkbox"/> Energy Education	<input type="checkbox"/> Transportation

2 State: Tennessee

3 Program Year: 2010 Date Start: 5/01/09 Date End: 3/31/12

4 Topics Involved in the Overall Program Market (choose all that apply):

<input type="checkbox"/> Agriculture	<input type="checkbox"/> Federal state, and local facilities	<input checked="" type="checkbox"/> Procurement of efficient products **
<input type="checkbox"/> Alternative fuels	<input type="checkbox"/> Federal Energy Management Program	<input checked="" type="checkbox"/> Public information
<input type="checkbox"/> Appliance efficiency and standards	<input checked="" type="checkbox"/> Financing energy programs	<input type="checkbox"/> Rating and labeling
<input type="checkbox"/> Bioenergy and biobased products	<input type="checkbox"/> Fuel cells	<input type="checkbox"/> Rebuild America
<input type="checkbox"/> Biomass power	<input checked="" type="checkbox"/> General energy efficiency for industry	<input type="checkbox"/> Residential buildings
<input type="checkbox"/> Building America	<input type="checkbox"/> Geothermal	<input type="checkbox"/> Right turn on red **
<input type="checkbox"/> Carpools, vanpools, and ridesharing **	<input checked="" type="checkbox"/> Green power programs	<input type="checkbox"/> Schools
<input type="checkbox"/> Clean Cities	<input type="checkbox"/> Heavy vehicles and trucks	<input checked="" type="checkbox"/> Solar power
<input checked="" type="checkbox"/> Climate change planning	<input type="checkbox"/> Home energy ratings	<input checked="" type="checkbox"/> State energy strategic plans
<input type="checkbox"/> Combined heat and power	<input type="checkbox"/> Hydrogen	<input type="checkbox"/> Telecommuting
<input checked="" type="checkbox"/> Commercial buildings	<input type="checkbox"/> Hydropower	<input type="checkbox"/> Thermal **
<input checked="" type="checkbox"/> Curriculum development	<input checked="" type="checkbox"/> Industrial processing	<input type="checkbox"/> Traffic signals
<input checked="" type="checkbox"/> Demand reduction	<input checked="" type="checkbox"/> Industries of the future	<input checked="" type="checkbox"/> Transmission and infrastructure reliability
<input checked="" type="checkbox"/> Distributed energy generation	<input type="checkbox"/> Lighting **	<input type="checkbox"/> Transportation alternatives
<input checked="" type="checkbox"/> Energy and environment	<input type="checkbox"/> Low-income weatherization	<input type="checkbox"/> Waste management and recycling
<input type="checkbox"/> Energy building codes	<input checked="" type="checkbox"/> Manufacturing	<input type="checkbox"/> Water systems
<input type="checkbox"/> Energy consumption and price statistics	<input checked="" type="checkbox"/> Motors and other industrial systems	<input type="checkbox"/> Wind energy
<input type="checkbox"/> Energy emergency planning	<input type="checkbox"/> Performance contracting	
<input type="checkbox"/> ENERGY STAR	<input checked="" type="checkbox"/> Policy and energy legislation	

5 Estimated Annual Energy Savings: 0 MBtus

6 Description (executive summary of goals and objectives)*

INTRODUCTION

Contained in this application is a request for approval of State Energy Program (SEP) funds under the American Recovery and Reinvestment Act (ARRA) to support a comprehensive solar energy and economic development program focusing on job creation, education, renewable power production, and scientific efforts to reduce the cost and increase the efficiency of solar energy. We believe the targeted use of these federal resources has the potential to enhance the unique economic and renewable-energy activities already underway in our state, accelerate the market transformation that is occurring nationally, and address President Obama's short-term goals in economic stimulus and long-term objectives in expanding renewable energy production and use, both in Tennessee and nationwide.

BACKGROUND

As a prelude to our request, allow us to share recent developments that have established Tennessee as a leader in promoting cleaner and more efficient energy use leading up to enactment of the ARRA. Over the past two years, under the leadership of Governor Phil Bredesen and the Tennessee General Assembly, our state has made major strides in encouraging energy efficiency and conservation and promoting renewable energy. Perhaps most notably in the efficiency category, the state in 2008 established the Energy Efficient Schools Initiative (EESI) using approximately \$90 million in excess proceeds from our state's lottery program to fund energy-efficient retrofits of public school buildings across Tennessee. The first round of EESI grants is currently being awarded to all school districts across the state under this forward-looking program.

Concurrent with efforts to improve energy conservation in our schools, Governor Bredesen established the Governor's Task Force on Energy Policy to explore additional statewide strategies, including: Advancing efforts by state government to lead by example in retrofitting its largest buildings with more energy efficient equipment and appliances and purchasing more fuel efficient vehicles in its fleet; formally designating the clean-energy technology sector as eligible for our state's emerging industry tax credit; and, in the interest of promoting statewide energy efficiency, establishing a residential building code in areas of the state where no minimum standards exist. Legislation is currently before the General Assembly to accomplish these goals and more.

It is important to note that the State of Tennessee's investments in energy efficiency are ongoing. Currently, we are examining options for programming up to \$38 million held in our petroleum violation escrow (PVE) accounts to undertake additional allowable energy related activities, such as the provision of low-interest loans for small- and medium-sized commercial and industrial firms seeking to make energy efficiency improvements in their facilities. Our detailed plans for use of these resources will be included in Tennessee's upcoming application for regular SEP formula funds and in the state's PVE annual report. The General Assembly has authorized the Energy Policy Office to program remaining funds in our PVE accounts as part of the state budget for the 2009-10 fiscal year, which began July 1, 2009.

Additionally, the state has focused significant resources in promoting cleaner and independent sources of energy in the transportation sector. In 2007, we invested approximately \$70 million to establish the Tennessee Biofuels Initiative between the University of Tennessee (UT) and Oak Ridge National Laboratory (ORNL). The resulting activities led to a partnership between DuPont Danisco Cellulosic Ethanol, LLC, and Genera Energy, LLC, representing the UT Research Foundation. Last October, the partnership began developing a pilot-scale cellulosic ethanol biorefinery and research and development facility. The state's investments successfully leveraged a \$135-million investment by the U.S. Department of Energy (DOE) to create a Bioenergy Research Center at ORNL. More recently, we began exploring opportunities to accelerate the development of electric vehicles, including those that will be produced by Nissan, which in 2008 completed the relocation of its North American headquarters to Middle Tennessee. The General Assembly approved Governor Bredesen's request to appropriate approximately \$5 million from our PVE accounts to participate in a DOE-approved multistate electric vehicle project led by Electric Transportation Engineering Corp., based in Phoenix, Ariz., and Nissan North America, based in Franklin, Tenn. The ARRA-funded project, announced in August, is being described as the largest deployment of electric vehicles and infrastructure ever undertaken.

Finally, Tennessee is committed to growing the clean energy technology sector of the state's economy. A June 10, 2009, report by the Pew Charitable Trusts found that Tennessee is one of only three states in the country — including Colorado and Oregon — that enjoy a large and fast-growing clean energy economy. Tennessee's economic development strategy has generated notable success in recruiting renewable-energy firms, marked by billion-dollar investments in our state by two of the solar industry's largest suppliers. Within the past year, Hemlock Semiconductor and Wacker Chemie AG, both producers of polycrystalline silicon, a key precursor element in photovoltaic solar panels, announced plans to bring thousands of jobs to Tennessee as the U.S. solar market expands. Hemlock Semiconductor will construct its production facility in Middle Tennessee and Wacker Chemie will open a production site in Southeast Tennessee. Their arrival in the Volunteer State is in part attributable to an innovative green-energy tax credit approved by the General Assembly last year. The companies' decisions, we believe, reflect a confidence in Tennessee's commitment to making further investments that encourage the development of solar energy. We also believe current conditions in the solar industry hold the potential for future growth in our state.

Looking ahead, the State of Tennessee's challenge is to leverage and build on the current momentum created by activities and investments already underway in our state in energy efficiency and conservation and renewable energy. In considering options for use of ARRA funds, we saw two fundamental paths: Augment existing substantial programs and seed smaller new initiatives, both of which are expected to occur using funds held in our PVE accounts; or pursue the targeted use of additional federal resources to advance our state's existing renewable energy and economic development strategy, which aligns with the President's key short- and long-term economic stimulus and renewable energy goals. We believe the latter option is the best approach.

PROPOSAL

Guided by the increasingly bright prospects of continued growth in the solar industry in Tennessee, we are proposing to use the state's SEP funds under ARRA to build on our current efforts by establishing a comprehensive solar energy and economic development program focusing on job creation, education, renewable power production, and technology commercialization efforts to reduce the cost and increase the efficiency of solar energy, which in part will encourage energy efficiency and conservation by supplanting the use of electricity generated by fossil fuels. Our proposed use of ARRA funds is part of a broader strategy to stimulate short-term economic activity, position Tennessee to support expansion of the solar industry, and help accelerate the national market transformation in a manner that will create jobs and ensure a clean energy future.

Specifically, Tennessee's proposed solar initiative consists of two integrated projects: The Tennessee Solar Institute at UT and ORNL; and the West Tennessee Solar Farm near Brownsville, a five-megawatt multi-acre power generation facility. Short-term, the projects will go hand-in-hand in creating or supporting jobs in construction, manufacturing and installation, and scientific efforts to reduce the cost and increase the efficiency of solar energy. Long-term, the combined investments are designed to strengthen Tennessee's position as a national energy research hub and emerging force in the U.S. solar industry. Each project is described below in detail.

TENNESSEE SOLAR INSTITUTE

The Tennessee Solar Institute at UT and ORNL is a new initiative that will serve as a center for excellence to spur accelerated growth in Tennessee's burgeoning solar industry and a crossroads for a wide range of solar-related activities in the Volunteer State. Among other purposes, it will bring together scientists, engineers and technical experts with business leaders, policymakers, and industry workers to help speed the deployment and of solar photovoltaic (PV) technology. It will be a home for regional and state initiatives that foster the creation of new businesses. By establishing strategic industry partnerships across the solar value chain, the Institute will provide technical assistance and workforce development to solar industry firms, assist in technology commercialization, help improve facilities and manufacturing processes, and undertake other efforts to help grow the solar industry in Tennessee.

A wide range of activities will be conducted as part of the Institute's overall mission through UT and ORNL. For the purposes of expending SEP-ARRA funds, the State of Tennessee proposes using the Institute to administer or coordinate two specific activities deemed allowable under DOE regulations and SEP-ARRA guidelines: "Solar Innovation Grants" and "Solar Installation Grants," which are described below. The net result of these activities will encourage energy efficiency and conservation by supplanting the use of electricity generated by fossil fuels.

SOLAR INNOVATION GRANTS

To encourage growth in Tennessee's solar industry, the State of Tennessee proposes using a portion of its SEP-ARRA funds to establish a "Solar Innovation Grants" program for qualifying Tennessee solar industry firms seeking technical assistance, facility or process improvements, workforce development and other support allowable under DOE regulations and SEP-ARRA guidelines. This proposal will accelerate market transformation toward renewable energy and fits within SEP-ARRA goals and objectives because it encourages energy efficiency and conservation and supplants the use of electricity generated by fossil fuels. Solar Innovation Grants will be administered by the Tennessee Solar Institute at UT and ORNL under a contract with the Department of Economic and Community Development (ECD).

Activities eligible for Solar Innovation Grants will include:

- **Technical Assistance:** Qualifying solar industry firms or firms engaged in solar-related business activities may access grants to support use of the following technology commercialization services: conducting energy assessments or audits; launching energy efficiency/renewable energy (EE/RE) benefit promotional and marketing activities or campaigns; engaging in, responding to or leveraging funding opportunities for EE/RE measure projects; and conducting feasibility studies to facilitate access to capital and credit for EE/RE measure projects. The Tennessee Solar Institute will issue a Request for Proposals for Technical Assistance Innovation Grants on behalf of ECD. ECD estimates ten (10) \$100,000 Technical Assistance Innovation Grants will be awarded.

- **Facilities and Equipment Improvements:** Qualifying firms may access grants in order to implement, expand, upgrade or demonstrate EE/RE products, equipment and materials for use in their operations. Specifically, grants will be used to employ EE/RE measures by purchasing and installing equipment. Results will be measured by capturing baseline data and measuring EE/RE progress or variance from the baseline in areas such as oil displacement, efficiency improvements and energy conservation. The Tennessee Solar Institute will issue a Request for Proposals for Facilities and Equipment Improvement Innovation Grants on behalf of ECD. ECD estimates ten (10) \$500,000 Facilities and Equipment Improvement Innovation Grants will be awarded.
- **Renewable Energy Products:** Qualifying firms may access grants in order to acquire, upgrade or demonstrate renewable energy products, equipment and materials for use in their operations, provided that any energy-generation demonstration must be small scale. "Small scale" is defined as appropriately sized units on existing rooftops and parking shade structures, or 60kW systems or smaller installed on the ground within the boundaries of an existing facility. The Tennessee Solar Institute will issue a Request for Proposals for Renewable Energy Product Innovation Grants on behalf of ECD. ECD estimates that ten (10) \$150,000 Renewable Energy Product Innovation Grants will be awarded.
- **Process Improvements:** Qualifying firms may access grants in order to make production, manufacturing, assembly or distribution processes be less energy-intensive by conducting industrial energy audits and through the purchase and installation of energy efficient and renewable energy equipment and materials, including reasonable design costs. The Tennessee Solar Institute will issue a Request for Proposals for Process Improvement Innovation Grants on behalf of ECD. ECD estimates that ten (10) \$500,000 Process Improvement Innovation Grants will be awarded.
- **Technology Improvements:** Qualifying firms may access grants in order to interact with resources that can analyze existing techniques or technologies in the interest of speeding the improvement and deployment of commercially available EE/RE techniques and technologies. SEP-ARRA funds will cover travel, conference, database research and other ancillary costs, to facilitate such interactions. The Tennessee Solar Institute will issue a Request for Proposals for Technology Improvement Grants on behalf of ECD. ECD estimates that ten (10) \$100,000 Technology Improvement Innovation Grants will be awarded.
- **Workforce Development:** Qualifying firms may access grants in order to conduct education and training activities for their employees related to the sale, installation, and maintenance of solar systems and equipment. Examples of possible activities include training for solar PV installers and technicians and other certification approved by the North American Board of Certified Energy Practitioners (NABCEP). In certain instances, SEP-ARRA funds may be used to host meetings and conferences and cover costs such as material purchases, space rentals, travel expenses and instructor fees. NEPA categorical exclusions are expected in loan and grant programs for "training programs." Contemplated activities will fall within this general scope. A detailed scope of intended training objectives will be developed post-award. The Tennessee Solar Institute will issue a Request for Proposals for Workforce Development Innovation grants on behalf of ECD. ECD estimates that twenty (20) \$50,000 grants Workforce Development Innovation grants will be awarded.

SOLAR INSTALLATION GRANTS

To speed the deployment of solar energy, the State of Tennessee proposes using a portion of its SEP-ARRA funds to establish a "Solar Installation Grants" program for qualifying Tennessee businesses to help fund the purchase and installation of small-scale solar PV systems. This proposal fits within SEP-ARRA goals and objectives because it encourages energy efficiency and conservation and supplants the use of electricity generated by fossil fuels. Solar Installation Grants will be administered through the State's existing Tennessee Clean Energy Technology Grant Program (TN-CET) in partnership with the Tennessee Solar Institute. Installation Grants will be small scale. "Small scale" will be defined as appropriately sized units on existing rooftops and parking shade structures, or 60kW systems or smaller installed on the ground within the boundaries of an existing facility.

Guidelines for Solar Installation Grants will include:

- **Eligible Participants:** For-profit retail, industrial or commercial businesses licensed to do business in Tennessee. Farms are eligible provided that at least 51% of income is generated from farming operations.
- **Eligible Systems:** Small-scale solar PV systems installed either on or adjacent to buildings located in Tennessee and used by the applicant for retail, commercial and/or industrial purposes. Installation Grants will be small scale. "Small scale" will be defined as appropriately sized units on existing rooftops and parking shade structures, or 60kW systems or smaller installed on the ground within the boundaries of an existing facility.
- **Maximum Award:** Forty percent (40%) of an installed system's cost, up to a maximum of \$75,000. Businesses with multiple locations can apply for grants in up to three locations.
- **Other Requirements:** Grants will be paid on a reimbursement basis after certifications of completion and support documentation have been provided. Systems and installations must meet applicable local building codes and have required permits. Contractors or installers must be licensed, bonded and insured, and preferably certified by NABCEP.

Institute activities such as those described above will speed the deployment of and accelerate advances in energy efficiency and renewable energy initiatives. More broadly, the Institute's efforts will result in a heightened understanding and acceptance of solar energy across the state, region and nation. The Institute will attract additional solar-industry investment in Tennessee. As the Institute develops, the State may identify additional activities allowable under DOE regulations and SEP-ARRA guidelines. As additional activities are identified, the State may request funding consideration under revised plans.

WEST TENNESSEE SOLAR FARM

The West Tennessee Solar Farm near Brownsville is envisioned as a five-megawatt multi-acre power generation facility located on a piece of property in Haywood County, Tennessee, adjacent to Interstate 40. The Farm will be comprised of approximately 22,300 panels and demonstrate a range of commercially available solar techniques and technologies. These will likely include: traditional stationary solar photovoltaic (PV) technology, solar tracking technology, thin-film solar technology, and energy storage technology. The State intends to contract the development, installation and management of the Farm — specifically, the power-generation system — to the University of Tennessee (UT) and/or Genera Energy, LLC, of Knoxville, Tennessee, a UT-affiliated firm that has established a track record of success in developing the state's bioenergy programs. Under a preliminary agreement, power generated by the Farm will be purchased at a renewable energy price by the Tennessee Valley Authority (TVA), a federally owned utility that is the nation's largest public power company. Proceeds from power sales will be reinvested in the site for maintenance, expansion and improvement. All program income will be handled in accordance with 10 CFR § 600.124. When the power purchase agreement is finalized, the Tennessee Department of Economic and Community Development (ECD) will submit a plan that details how program income will be used for planned maintenance, expansion and improvement of the Farm. Any expansion of the Farm funded through revenue generated by the power purchase agreement will be limited to commercially available technology. The Solar Farm as currently planned is approximately one mile from an independent industrial megasite also planned for the County. The State of Tennessee's FY2009-10 budget includes state funds for the purchase of the land associated with both the industrial megasite and the Solar Farm. There is no link between the power or revenue generated at the Solar Farm with the megasite.

The Solar Farm's purpose and goals align directly with the principles of the Recovery Act, DOE Objectives, and goals of the State Energy Program as outlined in Section 4.2 of the SEP-ARRA Guidance. Specifically: Demonstrate the zero-carbon production of electricity on a highly visible and significant scale that will create jobs, educate the public on the benefits of solar energy, encourage future renewable energy interest and investments across Tennessee and throughout the region, reduce GHG emissions, and increase renewable energy generation. The five-megawatt Farm will be one of the largest solar installations in the Southeastern US — a region that is heavily dependent on carbon-emitting sources for power generation. The Farm will demonstrate that solar technology can be used effectively, with no adverse environmental impact, to generate electricity from sources that produce no GHG emissions.

The Solar Farm will be a model for utilities seeking to diversify energy generation portfolios in order to comply with new laws, rules or regulations. The Farm will reduce GHG emissions by up to 15 million tons of CO₂ equivalents annually and generate 6 million to 8 million kWh of renewable energy annually. Under a preliminary agreement, power generated by the Farm will be purchased at a renewable energy price by TVA. TVA will purchase the power through an interconnection agreement with a local distributor, Chickasaw Electric Cooperative. From an economic-development standpoint, the Farm will serve as a showcase for Tennessee-made solar products and components, such as panels assembled by Sharp Solar Energy Solutions Group, which operates a nearby manufacturing facility in Memphis, and glass produced by AGC Flat Glass, which has a longstanding manufacturing presence in Northeast Tennessee. Additionally, the Farm will include materials produced by more recent entrants to the Volunteer State, including Hemlock Semiconductor and Wacker Chemie. Product orders will represent a boost in short-term production for manufacturers such as Sharp and AGC Flat Glass, and result in downstream economic activity associated with installation. Through strategic partnerships, the Farm will demonstrate other products and components made by firms with a presence in Tennessee and the region. Additionally, the Solar Farm may assist in the Solar Institute's technology commercialization efforts by demonstrating improved solar PV technologies and other commercially available technologies that may improve efficiency related to the grid.

Finally, the Solar Farm will have a significant public education mission that will allow citizens and students to gain firsthand exposure to solar energy production in order to better understand its benefits. Each year, more than 9.7 million vehicles will pass by the Farm on the existing Interstate 40 corridor in West Tennessee. Public education activities will occur at a proposed state-funded Education and Welcome Center that will be located directly on I-40, adjacent to the Farm. SEP-ARRA funds will be used to support educational activities at the Farm site and inside the Education and Welcome Center. SEP-ARRA funds will not be used to support construction or land purchase. The Education and Welcome Center will be developed in coordination with the Tennessee Department of Transportation (TDOT) as a pull-through interstate welcome center, resulting in minimal traffic disruption in the immediate area and eliminating the need for local access roads into the site. TDOT or another state entity will coordinate and execute the land acquisition using state funds. Based on a preliminary environment site assessment, there do not appear to be critical environmental issues at the subject site. There is no presence of threatened and endangered species, wetlands, or cultural resources that would be significantly impacted by installation activities. No significant issues are expected with regards to air quality, water or land use, socioeconomics, or environmental justice.

CONCLUSION

Together, we believe the integrated projects constitute a comprehensive solar energy and economic development program that will move Tennessee's economy forward and produce both short-term and long-term economic benefits. The proposal is a natural extension of Tennessee's overall energy strategy, which includes a broad variety of energy efficiency and conservation and renewable energy investments and activities already underway. Perhaps most important, as stated, our experience gives us confidence that the targeted use of additional federal resources will promote the President's dual objectives to stimulate the U.S. economy and strengthen America's clean energy future.

ASSISTANCE AGREEMENT

Award No. E-EE0000160		2. Modification No.	3. Effective Date 04/20/2009	4. CFDA No. 81.041
Awarded To ECONOMIC AND COMMUNITY DEVELOPMENT, TENNESSEE Attn: RANDALL LAMP 12 EIGHTH AVE NORTH 10TH FLR ASHVILLE TN 372430405		6. Sponsoring Office NETL - Morgantown U.S. Department of Energy NETL 3610 Collins Ferry Road P.O. Box 880 Morgantown WV 26507-0880		7. Period of Performance 04/20/2009 through 04/30/2012
Type of Agreement <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Other	9. Authority 31 USC 6304 See Page 2 10 USC 2358		10. Purchase Request or Funding Document No. 09EE000563	
Remittance Address ECONOMIC AND COMMUNITY DEVELOPMENT, TENNESSEE Attn: RANDALL LAMP 12 EIGHTH AVE NORTH 10TH FLR ASHVILLE TN 372430405		12. Total Amount Govt. Share: \$62,482,000.00 Cost Share : \$0.00 Total : \$62,482,000.00		13. Funds Obligated This action: \$6,248,200.00 Total : \$6,248,200.00
Principal Investigator Alan Gooch 15-741-2994		15. Program Manager OTIS MILLS Phone: 412-386-5890		16. Administrator NETL - Morgantown U.S. Department of Energy National Energy Technology Laboratory 3610 Collins Ferry Road Morgantown WV 26507-0880
Submit Payment Requests To Payment - Direct Payment from U.S. Dept of Treasury		18. Paying Office		19. Submit Reports To See Reporting Requirements Checklist
20. Accounting and Appropriation Data Recovery Act - SEP Formula Grants				
21. Research Title and/or Description of Project RECOVERY ACT - STATE ENERGY PROGRAM				
For the Recipient		For the United States of America		
Signature of Person Authorized to Sign		25. Signature of Grants/Agreements Officer 		
Name and Title		24. Date Signed	26. Name of Officer Keith L. Carrington	27. Date Signed 04/20/2009

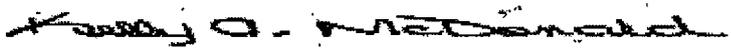
ONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED	PAGE	OF
	DE-EE0000160	2	2

NAME OF OFFEROR OR CONTRACTOR
 ECONOMIC AND COMMUNITY DEVELOPMENT, TENNESSEE DEPARTMENT OF

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>DUNS Number: 879015923 DOE Award Administrator: Sheldon Funk, sheldon.funk@netl.doe.gov; 304-285-0204</p> <p>Recipient Business Point of Contact: Ryan Gooch, Ryan.Gooch@tn.gov; 615-741-2994</p> <p>Block 9. Authority: PL 95-91 DOE Organization Act, PL 111-5 American Recovery and Reinvestment Act of 2009 and PL 109-58 Energy Policy Act of 2005.</p> <p>ASAP: Yes Extent Competed: NOT COMPETED Delivery: 04/30/2012 Delivery Location Code: 02605 NETL - Morgantown US Department of Energy NETL ATTN: Receiving Dept. 3610 Collins Ferry Road Morgantown WV 26507-0880</p> <p>Payment: Payment - Direct Payment from U.S. Dept of Treasury Fund: 05798 Appr Year: 2009 Allottee: 31 Report Entity: 220540 Object Class: 41000 Program: 1004901 Project: 2004370 WFO: 0000000 Local Use: 0000000 TAS Agency: 89 TAS Account: 0331</p>				

NOT SPECIFIED /OTHER

ASSISTANCE AGREEMENT

1. Award No. DE-EE0000160		2. Modification No. 001	3. Effective Date 09/15/2009	4. CFDA No. 81.041	
5. Awarded To ECONOMIC AND COMMUNITY DEVELOPMENT, TENNESSEE Attn: RANDALL LAMP 312 EIGHTH AVE NORTH 10TH FLR NASHVILLE TN 372430405		6. Sponsoring Office NETL - Morgantown U.S. Department of Energy NETL 3610 Collins Ferry Road P.O. Box 880 Morgantown WV 26507-0880		7. Period of Performance 04/20/2009 through 04/30/2012	
8. Type of Agreement <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Other	9. Authority 31 USC 6304 See Page 2 10 USC 2358		10. Purchase Request or Funding Document No. 09EE004705		
11. Remittance Address ECONOMIC AND COMMUNITY DEVELOPMENT, TENNESSEE Attn: RANDALL LAMP 312 EIGHTH AVE NORTH 10TH FLR NASHVILLE TN 372430405		12. Total Amount Govt. Share: \$62,482,000.00 Cost Share : \$0.00 Total : \$62,482,000.00	13. Funds Obligated This action: \$24,992,800.00 Total : \$31,241,000.00		
14. Principal Investigator Ryan Gooch 615-741-2994	15. Program Manager OTIS MILLS Phone: 412-386-5890		16. Administrator NETL - Morgantown U.S. Department of Energy National Energy Technology Laborato 3610 Collins Ferry Road Morgantown WV 26507-0880		
17. Submit Payment Requests To Payment - Direct Payment from U.S. Dept of Treasury		18. Paying Office		19. Submit Reports To See Reporting Requirements Checklist	
20. Accounting and Appropriation Data See Schedule					
21. Research Title and/or Description of Project RECOVERY ACT - STATE ENERGY PROGRAM					
For the Recipient			For the United States of America		
22. Signature of Person Authorized to Sign			25. Signature of Grants/Agreements Officer 		
23. Name and Title		24. Date Signed	26. Name of Officer Kelly A. McDonald		27. Date Signed 09/15/2009

NOT SPECIFIED /OTHER

CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED	PAGE	OF
	DE-EE0000160/001	2	3

NAME OF OFFEROR OR CONTRACTOR
 ECONOMIC AND COMMUNITY DEVELOPMENT, TENNESSEE DEPARTMENT OF

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>DUNS Number: 879015923 DOE Award Administrator: Sheldon Funk, sheldon.funk@netl.doe.gov; 304-285-0204</p> <p>Recipient Business Point of Contact: Ryan Gooch, Ryan.Gooch@tn.gov; 615-741-2994</p> <p>Block 9. Authority: PL 95-91 DOE Organization Act, PL 111-5 American Recovery and Reinvestment Act of 2009 and PL 109-58 Energy Policy Act of 2005.</p> <p>ASAP: Yes Extent Competed: NOT COMPETED **See Page 3 for full amendment language</p> <p>NEW ACCOUNTING CODE ADDED: Account code: Fund 05798, Appr Year 2009, Allottee 31, Reporting Entity 220540 Quantity: 0 Amount: \$24,992,800.00 Percent: 40 Subject To Funding: N</p> <p>Delivery: 04/30/2012 Delivery Location Code: 02605 NETL - Morgantown US Department of Energy NETL ATTN: Receiving Dept. 3610 Collins Ferry Road Morgantown WV 26507-0880</p> <p>Payment: Payment - Direct Payment from U.S. Dept of Treasury</p>				

ASSISTANCE AGREEMENT

1. Award No. DE-EE0000160		2. Modification No. 002	3. Effective Date 09/19/2009	4. CFDA No. 81.041	
5. Awarded To ECONOMIC AND COMMUNITY DEVELOPMENT, TENNESSEE Attn: RANDALL LAMP 312 EIGHTH AVE NORTH 10TH FLR NASHVILLE TN 372430405		6. Sponsoring Office NETL - Morgantown U.S. Department of Energy NETL 3610 Collins Ferry Road P.O. Box 880 Morgantown WV 26507-0880		7. Period of Performance 04/20/2009 through 04/30/2012	
8. Type of Agreement <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Other	9. Authority 31 USC 6304 See Page 2 10 USC 2358		10. Purchase Request or Funding Document No. 09EE004708		
11. Remittance Address ECONOMIC AND COMMUNITY DEVELOPMENT, TENNESSEE Attn: RANDALL LAMP 312 EIGHTH AVE NORTH 10TH FLR NASHVILLE TN 372430405		12. Total Amount Govt. Share: \$62,482,000.00 Cost Share : \$0.00 Total : \$62,482,000.00		13. Funds Obligated This action: \$31,241,000.00 Total : \$62,482,000.00	
14. Principal Investigator Ryan Gooch 615-741-2994	15. Program Manager OTIS MILLS Phone: 412-386-5890		16. Administrator NETL - Morgantown U.S. Department of Energy National Energy Technology Laborato 3610 Collins Ferry Road Morgantown WV 26507-0880		
17. Submit Payment Requests To Payment - Direct Payment from U.S. Dept of Treasury		18. Paying Office		19. Submit Reports To See Reporting Requirements Checklist	
20. Accounting and Appropriation Data See Schedule					
21. Research Title and/or Description of Project RECOVERY ACT - STATE ENERGY PROGRAM					
For the Recipient			For the United States of America		
22. Signature of Person Authorized to Sign			25. Signature of Grants/Agreements Officer 		
23. Name and Title		24. Date Signed	26. Name of Officer DARLENE D. RIGGI		27. Date Signed 09/19/2009

CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED	PAGE	OF
	DE-EE0000160/002	2	3

NAME OF OFFEROR OR CONTRACTOR
 ECONOMIC AND COMMUNITY DEVELOPMENT, TENNESSEE DEPARTMENT OF

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>DUNS Number: 879015923 DOE Award Administrator: Sheldon Funk, sheldon.funk@netl.doe.gov; 304-285-0204</p> <p>Recipient Business Point of Contact: Ryan Gooch, Ryan.Gooch@tn.gov; 615-741-2994</p> <p>Block 9. Authority: PL 95-91 DOE Organization Act, PL 111-5 American Recovery and Reinvestment Act of 2009 and PL 109-58 Energy Policy Act of 2005.</p> <p>ASAP: Yes Extent Competed: NOT COMPETED</p> <p>**See Page 3 for Full Amendment Language</p> <p>NEW ACCOUNTING CODE ADDED: Account code: Fund 05798, Appr Year 2009, Allottee 31, Reporting Entity 220540 Quantity: 0 Amount: \$31,241,000.00 Percent: 50 Subject To Funding: N</p> <p>Delivery: 04/30/2012 Delivery Location Code: 02605 NETL - Morgantown US Department of Energy NETL ATTN: Receiving Dept. 3610 Collins Ferry Road Morgantown WV 26507-0880</p> <p>Payment: Payment - Direct Payment from U.S. Dept of Treasury</p>				

**GENERA SOLAR SOLUTIONS
REQUEST FOR
QUALIFICATIONS**



REQUEST FOR QUALIFICATIONS

Solar Design, Procurement, Installation,
and Operation/Maintenance Support Services
for
West Tennessee Solar Array

December 31, 2009

TABLE OF CONTENTS

Section 1:	Introduction
Section 2:	Project Description
Section 3:	Contractor Responsibilities
Section 4:	Proposed Project Timeline
Section 5:	RFQ Response Procedures and Format
Section 6:	Miscellaneous Provisions

1.0 Introduction

Genera Solar Solutions LLC (hereinafter referred to as **Genera**) is seeking to identify qualifications from potential solar design, procurement, installation and operating companies (or teams of companies) (**Contractors**) to design, procure, install, and support operation/maintenance of a solar array to be located at the West Tennessee Solar Farm (**Solar Farm**) in Haywood County, TN. The Solar Farm, which will demonstrate the production of renewable energy and undertake other activities to educate the public on the benefits of renewable energy, is part of Tennessee's Volunteer State Solar Initiative. The array is being funded through the Tennessee Department of Economic and Community Development (ECD) with funding received under the federal American Recovery and Reinvestment Act (ARRA). Genera is issuing this RFQ at the request of the University of Tennessee (UT), which, pending the execution of a services contract with ECD, will be responsible for developing the array. UT is expected to subcontract aspects of the array development to the UT Research Foundation (UTRF) and its wholly-owned subsidiary Genera. Submitted qualifications will be evaluated, a short list of qualified Contractors will be identified, and Genera anticipates a Request for Proposals (RFP) will be issued to those identified qualified Contractors.

Responses to the RFP will be evaluated in anticipation of entering into a guaranteed maximum price contract with one Contractor (which may consist of one qualified company or team of companies) for the design, procurement, installation, and support of operation/maintenance of the array. In addition, the Contractor will be required to provide an energy output Performance Guarantee for the array for the first ten (10) years of system operation. Genera reserves the right to reject any and all qualifications and/or proposals and does not bind itself, the University of Tennessee, UT Research Foundation, or any agency of the State of Tennessee to issue an RFP or accept any qualifications/proposals or any part thereof.

2.0 Project Description

The Solar Farm will include a minimum 5 MW multi-acre ground-mounted solar array, which will deliver power to the local electrical grid through Chickasaw Electric Cooperative. The array will be located on property owned by the University of Tennessee. The array will expand over time through the reinvestment of net proceeds from power sales.

The array will be installed and operated/maintained in conjunction with development of, and contiguous to the location of, a proposed complementary interstate Education and Welcome Center to be designed, constructed and operated by the Tennessee Department of Transportation (**TDOT**). This proposed Education and Welcome Center is subject to approval by the Tennessee General Assembly, the Tennessee State Building Commission and other governmental authorities. Coordination of development of the array by the Contractor selected by Genera, in cooperation with TDOT as it develops the proposed Education and Welcome Center, will be required and critical to the success of this project.

RFQ for Solar Design, Procurement, Installation, and Operation/Maintenance Services

All design, procurement, installation, connectivity and commissioning of the array should be completed in 2010. Solar Farm site design should provide maximum flexibility for future expansion and the array's demonstration of other commercially available solar technologies and enhancement of the public education mission of the Solar Farm.

The Solar Farm Site ("**Site**") has been purchased by UT, located on a parcel north west of the intersection of Interstate 40 and Albright Road in Haywood County, as presented in **Exhibit A**. Total acreage available on the parcel for combined development of the array and the proposed Education and Welcome Center is approximately 140+ acres.

The West Tennessee Solar Farm funding award from the U.S. Department of Energy is subject to all requirements of the Department of Energy "SUBGRANT FLOW DOWN PROVISIONS FOR STATE GOVERNMENTS" attached hereto as **Exhibit B**.

The purchaser of the power to be generated by the array will be the Tennessee Valley Authority pursuant to a Power Purchase Agreement (**PPA**) to be negotiated with the technical assistance of Contractor. Contractor will provide additional technical support for the development and negotiation of an Interconnection Agreement with Chickasaw Electric Cooperative.

Revenue generated pursuant to the PPA will be used for planned operation, maintenance, expansion and improvement of the array.

Expedited preliminary site design (30%) will be required to support completion of Environmental Assessment (EA) activities required pursuant to the National Environmental Policy Act (NEPA). Expedited preliminary electrical connectivity design is necessary to permit interconnection agreement negotiation and allow identification and procurement of long-lead electrical control equipment to begin as soon as possible after the successful design and installation Contractor is selected. No site disturbance, preparation or installation activities may commence until a final determination is issued by the U.S. Department of Energy pursuant to the National Environmental Policy Act (**NEPA**).

The Solar Farm will demonstrate, using the array, a range of commercially available solar techniques and technologies, while maximizing power generation and public education and access to the facility. While not exhaustive, examples of these techniques and technologies may include: traditional single-axis photovoltaic technology on the majority of the site, demonstration of multiple-axis tracking photovoltaic technology, demonstration of thin-film solar technology, concentrating solar technology, and demonstration of energy storage technology as appropriate.

3.0 Contractor Responsibilities

Contractor responsibilities will include:

- Array design, equipment procurement, and Site permitting services.
- Array installation and project management, including critical path schedule management, Site development and management, and electric grid connectivity design and installation in coordination with Chickasaw Electric Cooperative and the Tennessee Valley Authority.
- Solar array and electrical system commissioning.
- Operation and maintenance support for the array for the first ten (10) years of system operation.
- Provide a performance guarantee for the electrical output of the array for the first ten (10) years of system operation.
- Preparing documents required for utility interconnection to the local electrical grid.
- Preparing documentation to support operation and maintenance of the array.
- Providing assistance in developing audience-appropriate educational materials as necessary for general public education about the array.
- Assistance with negotiating the PPA, Interconnection Agreement, and other relevant supporting documents.
- Timely preparation and submission of documentation to support reporting and demonstration of compliance with all requirements of the Department of Energy "SUBGRANT FLOW DOWN PROVISIONS FOR STATE GOVERNMENTS" attached hereto as Exhibit B.
- Timely preparation and submission of documentation to support NEPA Environmental Assessment development.
- Implementing project earned value management system demonstrating the following management elements for cost and schedule tracking:
 - Defined authorized work elements integrated with the Work Breakdown Structure (WBS).
 - Identified project organizational structure.
 - Integrated planning, scheduling, and budgeting processes.
 - Scheduling of authorized work in a sequential manner that identifies critical path tasks.
 - Establishment and resource loaded budget baselines.
 - Recording direct costs accurately and consistently.
 - Tracking defined project metrics on a regular basis as determined by Genera.
 - Developing revised cost estimates on an ongoing basis, based on performance and costs to date.
 - Incorporating authorized changes consistent with WBS and approved scope and costs.
 - Identification of variances based on performance to date and revised cost estimates.

4.0 Proposed Project Timeline

RFQ Issued:	December 31, 2009
Qualification Statements Due	January 12, 2010, 4 pm EST
Qualified Contractors Short List Determined/ Notification	January 22, 2010
Pre-Request for Proposal Meeting with Qualified Contractors	January 27, 2010
Request for Proposal Issued (Estimated)	February 1, 2010
Mandatory Site Walkthrough	February 3, 2010
Proposals and Preliminary Design Due	March 1, 2010
Selection of Contractor	March 10, 2010
Award of Contract (Estimated)	March 17, 2010
Array Operational and Commissioned	December 15, 2010

5.0 RFQ Response Procedures and Format

Responses to this RFQ shall be provided by **January 12, 2010, 4 pm EST** as an email attachment in Adobe Acrobat PDF format addressed to pflowers@generaenergy.net, with "Response to Tennessee Solar Farm RFQ" in the subject line. Additionally, written copies of the response should be provided, clearly marked on the envelope as follows: "Tennessee Solar Farm RFQ Response." Send five (5) copies to:

Genera Solar Solutions LLC
2450 E.J. Chapman Drive, Suite 216
Knoxville, TN 37996
ATTN: Paula Flowers

Responses to this RFQ should answer the following questions specifically. Additional company information may be submitted but will not receive priority consideration in review of qualifications:

1. Provide organization information for each company participating in the design, procurement, installation, and operation/maintenance support of the Solar Farm array.

RFQ for Solar Design, Procurement, Installation, and Operation/Maintenance Services

Each company's role in the project should be clearly described and delineated. For each company, provide at a minimum the following information:

- a. Organization information: Overview of company size, years in business, services, and resumes of key individuals who would specifically be responsible for servicing this project.
 - b. List contact information for all project team members for the firm or firms comprising your design/install team.
 - c. Detail company's capability and level of responsibility to contribute accomplishment of each of the required Contractor Responsibilities listed in Section 3.0 of this RFQ.
 - d. Demonstrate company financial viability to responsibly enter into potential agreement of the size and duration required for this project.
 - e. Demonstrate licensure in the State of TN for any design or installation activities contemplated in support of this project for companies who will participate in the project team.
2. Describe prior or current solar projects designed, procured, and/or installed by your company. Include this information for each company that is part of your design/build team. Detail specifically all previous design/build experience in utility-scale solar projects. For each such project provide at a minimum:
- a. Project name;
 - b. Location;
 - c. Project size in kW DC;
 - d. Year completed;
 - e. Name of project manager for your company responsible for this project;
 - f. Name, phone, and email contact information for client;
 - g. Brief physical description of the project (type of solar equipment, equipment manufacturer, model, etc.);
 - h. Brief description of your company's role in the project and names/ roles of other companies involved in the design, installation, or operation/ maintenance of the solar facility;
 - i. Describe performance guarantees, if any, issued by your company for the solar facility's operation and energy output; and
 - j. Describe role in development of Interconnection Agreements and Power Purchase Agreements.
3. Establish the financial standing of your company in terms of bonding ability and level of liability insurance.
4. Describe your company's experience and prior projects in working with requirements of the American Recovery and Reinvestment Act. For each such project provide at a minimum:
- a. Project name;
 - b. Location;
 - c. Funding agency;
 - d. Name of project manager for your company responsible for this project; and
 - e. Brief description of the project.
5. Describe your company's business history and business presence in the State of Tennessee.

RFQ for Solar Design, Procurement, Installation, and Operation/Maintenance Services

6. Describe your company's safety plan; include a copy of this plan if available, and describe the proposed Site safety plan for this project.
7. Describe in the detail the procedures to be used by your company in both the design and procurement phase of the project to ensure compliance with the Assistance Agreement's Required Use of American Iron, Steel, and Manufactured Goods.
8. Provide contact information for questions regarding RFQ submissions, including name and title, mailing address, phone number and email address.

By providing information as a response to this RFQ, respondents are consenting to its use and consideration by Genera and understand that the response may be deemed to be a public record that may be disclosed publicly to the Tennessee State Building Commission, agencies of the executive branch of government of the State of Tennessee, or the Tennessee General Assembly.

Amendments to the RFQ: In the event that any substantive issues require clarification or amendment during the process, an Amendment to this RFQ will be issued and posted on the Genera Energy LLC webpage: www.generaenergy.net. No mailing of updates, questions, or responses to questions regarding this RFQ will be performed by Genera for this RFQ.

Questions and Inquiries: Questions regarding the RFQ may be submitted to Paula Flowers at Genera via email: pflowers@generaenergy.net. No questions will be accepted by telephone, fax, mail, or hand delivery. Questions must be made on behalf of a prospective responding company and must include the requesting company's name, email or mailing address, telephone number, and the name of the prospective responding company. Questions submitted, along with the responses made, will be posted on Genera Energy's website. Genera will not post questions that are not related to this RFQ or are otherwise deemed inappropriate.

6.0 Miscellaneous Provisions

Genera reserves the right to reject any and all qualifications and/or proposals and does not bind itself to accept any qualifications or proposals or any part thereof.

No warranties or representations of any kind are made by Genera, including a representation or warranty that solar arrays will be installed. Genera does not intend to award a contract on the basis of this RFQ or to pay for the expressions of interest solicited. Submission of a response will in no way affect eligibility to respond to future solicitations for the potential development of future solar projects by the Tennessee Solar Institute or University of Tennessee or for any other design, construction, finance, maintenance or operations opportunities offered by Genera. Genera reserves the right to cancel this RFQ at any time with or without notice to respondents and without liability.

Equal Opportunity: No person or company shall be discriminated against because of race, color, national origin, or sex in the award of this potential contract. Further, there shall be no discrimination on the basis of race, color, national origin or sex in the performance of contracts awarded by Genera.

Exhibit A

SOLAR FARM SITE LOCATION

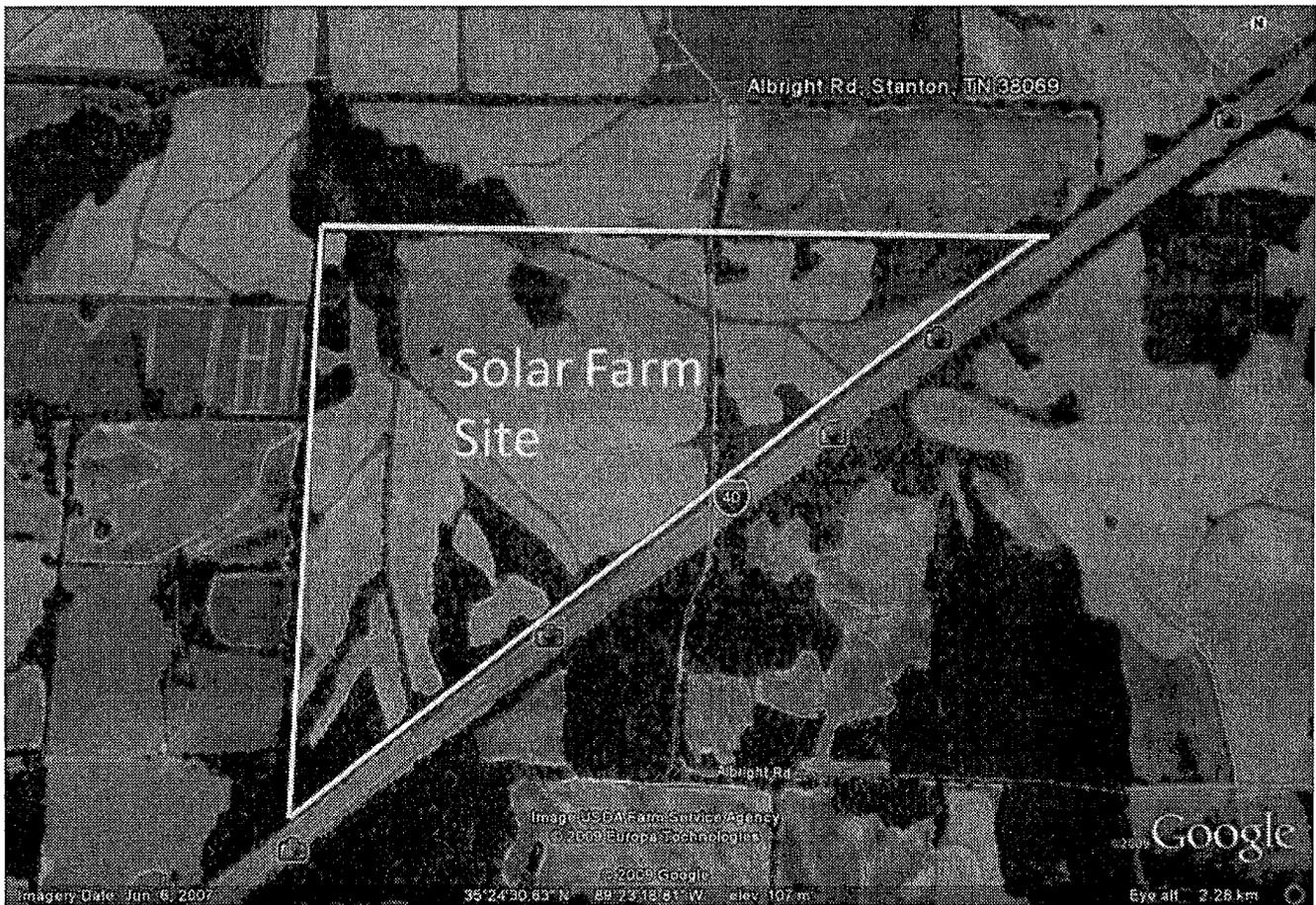


Exhibit B

Department of Energy

**SUBGRANT FLOW DOWN PROVISIONS
FOR STATE GOVERNMENTS**

Resolution of Conflicting Conditions

Statement of Federal Stewardship

Site Visits

Reporting Requirements

Publications

Federal, State, and Municipal Requirements

Intellectual Property Provisions and Contact Information

Lobbying Restrictions

Notice Regarding the Purchase of American-Made Equipment and Products -- Sense of Congress

Decontamination and/or Decommissioning (D&D) Costs

Historic Preservation

Flow Down Terms For ARRA Awards -- See Prescriptions for Applicability

Special Provisions Relating To Work Funded Under American Recovery and Reinvestment Act of 2009

Reporting and Registration Requirements Under Section 1512 of The Recovery Act

Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009

RFQ for Solar Design, Procurement, Installation, and Operation/Maintenance Services

Wage Rate Requirements Under Section 1606 Of The Recovery Act

Recovery Act Transactions Listed In Schedule of Expenditures of Federal Awards and Recipient Responsibilities For Informing Subrecipients

Davis Bacon Act Requirements

From 10 CFR 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 sub-grantees will follow paragraphs (b) through (i) in this section.

Note: 600.236 (i)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

10 CFR 600.236 -- <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

From 10 CFR 600.237-Subgrants

Retention and Access Requirements for Records

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies (refer state to 10 CFR 600.221(c)).

10 CFR 60.221(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

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SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS

RESOLUTION OF CONFLICTING CONDITIONS – MANDATORY FLOW DOWN REQUIRED

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.

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:

Attachment No.	Title
1	Intellectual Property Provisions
2	Federal Assistance Reporting Checklist
3	Budget Pages
4	State Annual File
5	State Master File
6	Wage Determination

c. Applicable program regulations [*Specify*][*Date*]

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.

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

a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you 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

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requesting additional cash payments from DOE.

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

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

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.

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.

STATEMENT OF FEDERAL STEWARDSHIP – MANDATORY FLOW DOWN REQUIRED

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

SITE VISITS – MANDATORY FLOW DOWN REQUIRED

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.

REPORTING REQUIREMENTS -- MANDATORY FLOW DOWN REQUIRED

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

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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.

PUBLICATIONS – MANDATORY FLOW DOWN REQUIRED

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 DE-EE0000095

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."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS – MANDATORY FLOW DOWN REQUIRED

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

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION – MANDATORY FLOW DOWN REQUIRED

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.

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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)

LOBBYING RESTRICTIONS – MANDATORY FLOW DOWN REQUIRED

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.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS – MANDATORY FLOW DOWN REQUIRED

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.

DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS – MANDATORY FLOW DOWN REQUIRED

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.

HISTORIC PRESERVATION -- MANDATORY FLOW DOWN REQUIRED

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

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

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written

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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.

Prescription: This clause must be included in all grants, cooperative agreements and TIAs (new or amended) when funds appropriated under the Recovery Act are obligated to the agreement.

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 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

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agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

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

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

Special Provisions

A. Flow Down Requirement

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

B. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

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

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

E. Publication

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

Notice of Restriction on Disclosure and Use of Data

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

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

F. Protecting State and Local Government and Contractor Whistleblowers.

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

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

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

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

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

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

G. Request for Reimbursement (this version is included in WAP/SEP awards with states)

RESERVED

H. False Claims Act

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

I. Information in 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.

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J. Availability of Funds

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

Prescription: The following award term shall be used to implement the recipient reporting and registration requirements in the Recovery Act section 1512.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

- (a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- (b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.
- (c) Recipients and their first-tier 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.

Prescription: When awarding 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, the agency shall use this award term.

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

(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

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(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:

_____ [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 evaluation of the request, including--

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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(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)*

Item 1:

Foreign steel, iron, or manufactured good _____ _____ _____

Domestic steel, iron, or manufactured good _____ _____ _____

Item 2:

Foreign steel, iron, or manufactured good _____ _____ _____

Domestic steel, iron, or manufactured good _____ _____ _____

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

[Include other applicable supporting information.]

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

Prescription: When awarding 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, the agency shall use this award term.

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

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

Designated country—(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, 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,

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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:

[*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;

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(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:

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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.]*

Prescription: When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use this award term.

WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

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

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

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(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.

Prescription: The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures.

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

(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.

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Prescription: Include for ARRA awards when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT article is used.

DAVIS BACON ACT REQUIREMENTS

A. Definitions. For purposes of this term, the Contract Work Hours and Safety Standards Act term, and the Recipient Functions term, the following definitions are applicable:

(1) *Award* means the Award by the Department of Energy (DOE) to a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Subrecipients, Contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act.

(2) "*Construction, alteration or repair*" means all types of work done by laborers and mechanics employed by the Subrecipient, construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(a) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(b) Painting and decorating; or

(c) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.

(3) *Contract* means a written procurement contract executed by a Subrecipient for the acquisition of property and services for construction, alteration, and repair under a Subaward. For purposes of these terms, a Contract shall include subcontracts and lower-tier subcontracts under the Contract.

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

(5) *Contractor* means an entity that enters into a Contract. For purposes of these terms, Contractor shall include subcontractors and lower-tier subcontractors.

(6) *Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant directly from the Federal Government. The term includes the State that receives an Award from DOE and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(7) "Site of the work"—

(a) Means—

(i) The physical place or places where the construction called for in the Award, Subaward, or Contract will remain when work on it is completed; and

(ii) Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the project;

(b) Except as provided in paragraph (c) of this definition, the site of the work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(1) They are dedicated exclusively, or nearly so, to performance of the project; and

(2) They are adjacent or virtually adjacent to the site of the work as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition; and

(c) 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 contract or 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 as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition, 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 an Award, Subaward, or Contract.

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

(9) *Subrecipient* means a non-Federal entity that expends Federal awards received from a pass-through entity [Recipient] to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. The term includes a Community Action Agency (CAA), local agency, or other entity to which a Subaward under the Award is made by a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the DBA work performed by all laborers and mechanics employed by contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant of the Recovery Act.

B. Davis-Bacon Act

(1)(a) 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 to the Subaward or Contract and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Recipient, a Subrecipient, or Contractor and such laborers and mechanics.

(i) Applicable to Recipient Only: Prior to the issuance of the Subaward or Contract, the Recipient shall notify the Contracting Officer of the site of the work in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(ii) If the Subaward or Contract is or has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph B(4) below; 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.

(c) 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 paragraph 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.

(d) The wage determination (including any additional classifications and wage rates conformed under paragraph B(2) of this term) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and Contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(a) 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 Subaward or Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

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(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.

(b) If the Subrecipient (and Contractor, when applicable) and the laborers and mechanics to be employed in the classification (if known), or their representatives agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of this agreement. If the Contracting Officer agrees with 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.

(c) In the event the Subrecipient (and Contractor, when applicable), and the laborers or mechanics to be employed in the classification, or their representatives, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of the disagreement. 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.

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs B(2)(b) or B(2)(c) of this Term shall be paid to all workers performing work in the classification under the Award, Subaward, or Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Award, Subaward, or Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient and 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.

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(4) If the Subrecipient or Contractor does not make payments to a trustee or other third person, the Subrecipient or 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 Subrecipient or Contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient or Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

C. Rates of Wages

(1) The minimum wages to be paid laborers and mechanics under the Subaward or Contract 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 the Award, Subaward, or Contract.

(2) If the Subaward or Contract has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

D. Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the Recipient, Subrecipient and 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 (4) of the provision 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 Subrecipient or 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. The Subrecipient or Contractor 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.

(2)(a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Subrecipient. The Subrecipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Recipient. The Recipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out

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accurately and completely all of the information required to be maintained under paragraph D(1) of this Term, except that the full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(b) The Recipient is responsible for the ensuring that all Subrecipients and Contractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this Term. The Subrecipient is responsible for ensuring all Contractors, including lower tier subcontractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this term. Subrecipients and Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request for transmission to the Contracting Officer, the Recipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The Recipient shall also obtain and provide the full social security number and current address of each covered worker upon request by the Contracting Officer or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Recipient to require a Subrecipient or Contractor to provide addresses and social security numbers to the Recipient for its own records, without weekly submission to the Contracting Officer.

(c) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Recipient, Subrecipient or Contractor or his or her agent who pays or supervises the payment of the persons employed under the Subaward or Contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph D(2)(a) of this Term, the appropriate information is being maintained under paragraph D(1) of this Term, and that such information is correct and complete;

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

(d) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph D(2)(c) of this Term.

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(e) The falsification of any of the certifications in Paragraph D, Payrolls and Basic Records, of this Term may subject the Recipient, Subrecipient or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Recipient, Subrecipient, or Contractor shall make the records required under paragraph D(1) of this Term available for inspection, copying, or transcription by the Contracting Officer, authorized representatives of the Contracting Officer, or the Department of Labor. The Subrecipient or Contractor shall permit the Contracting Officer, authorized representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Recipient, Subrecipient, or Contractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Recipient, Subrecipient, or Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

E. Withholding of Funds

(1) The DOE Contracting Officer shall, upon his or her or its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Recipient or any other contract or Federal Award with the same Recipient, on this or any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Recipient 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 Subrecipient or a Contractor the full amount of wages required by the Award or Subaward or a Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Award or Subaward or a Contract, the Contracting Officer may, after written notice to the Recipient 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.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from any Subrecipient or 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 Subrecipient or Contractor the full amount of wages required by the Subaward or Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Subaward or Contract, the Recipient may, after written notice to the Subrecipient or 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 or the Government may cause the suspension of any further payment under any other contract or Federal award with the same Subrecipient or Contractor, on any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Subrecipient or Contractor.

F. Apprentices and Trainees

(1) Apprentices.

(a) 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.

(b) 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 Subrecipient or Contractor as to the entire work force under the registered program.

(c) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph F(1) of this Term, 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.

(d) Where a Subrecipient or 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 Subrecipient's or Contractor'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.

(e) 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.

(f) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Subrecipient or 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.

(2) Trainees.

(a) 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 (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(b) 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/training 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.

(c) In the event OATELS withdraws approval of a training program, the Subrecipient or 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.

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

G. Compliance with Copeland Act Requirements

The Recipient, Subrecipient or Contractor shall comply with the requirements of 29 CFR Part 3 which are hereby incorporated by reference in the Award, Subaward or Contract.

H. Subawards and Contracts

(1) The Recipient, the Subrecipient and Contractor shall insert in the Subaward or any Contracts this Term entitled "Davis Bacon Act Requirements" and such other terms as the Contracting Officer may require. The Recipient shall be responsible for ensuring compliance by any Subrecipient or Contractor with all of the requirements contained in this Term. The Subrecipient shall be responsible for the compliance by Contractor with all of the requirements contained in this Term.

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(2) Within 14 days after issuance of a Subaward, the Recipient shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Subaward and Contract for construction within the United States, including the Subrecipient's and Contractor's signed and dated acknowledgment that this Term) has been included in the Subaward and any Contracts. The SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf). Within 14 days after issuance of a Contract or lower-tier subcontract, the Subrecipient shall deliver to the Recipient a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Contract and lower-tier subcontract for construction within the United States, including the Contractor and lower-tier subcontractor's signed and dated acknowledgment that this Term has been included in any Contract and lower-tier subcontracts. SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf). The Recipient shall immediately provide to the DOE Contracting Officer the completed Standard Forms (SF) 1413.

I. Contract Termination—Debarment

A breach of these provisions may be grounds for termination of the Award, Subaward, or Contract and for debarment as a Contractor or subcontractor as provided in 29 CFR 5.12.

J. 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 the Award, Subaward or Contract.

K. 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 shall not be subject to any other dispute provision that may be contained in the Award, Subaward, and Contract. Disputes within the meaning of this Term include disputes between the Recipient, Subrecipient (including any Contractor) and the Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

L. Certification of Eligibility.

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

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

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

M. Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under an Award, Subaward or Contract must be submitted for approval in writing by the head of the federal 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, Subaward or Contract. Any amount paid by the Subrecipient or Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Subrecipient or Contractor and shall not be reimbursed by the Recipient or Subrecipient. If the Government refuses to authorize the use of the overtime, the Subrecipient or Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

Contract Work Hours and Safety Standards Act

This Term entitled "Contract Work Hours and Safety Standards Act (CWHSSA)" shall apply to any Subaward or Contract in an amount in excess of \$100,000. As used in this CWHSSA Term, the terms laborers and mechanics include watchmen and guards.

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

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

C. Withholding for unpaid wages and liquidated damages.

(1) The DOE Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Recipient on this or any other Federal Award or Federal contract with the same Recipient on any other federally-assisted Award or contract subject to the CWHSSA, which is held by the same Recipient such sums as may be determined to be necessary to satisfy any liabilities of such Recipient for unpaid wages and liquidated damages as provided in the term set forth in CWHSSA, paragraph B of this Term.

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(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause from any moneys payable on account of work performed by the Subrecipient or Contractor on this or any other federally assisted subaward or contract subject to the CWHSSA, which is held by the same Subrecipient or Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Subrecipient or Contractor for unpaid wages and liquidated damages as provided in term set forth in CWHSSA, paragraph B of this Term.

D. Subcontracts. The Subrecipient shall insert in a Contract and a Contractor shall insert in any lower tier subcontracts, the terms set forth in these CWHSSA paragraphs (A) through (D) and also a provision requiring the Contractors to include this CWHSSA Term in any lower tier subcontracts. The Recipient shall be responsible for compliance by any Subrecipient or Contractor, with the CWHSSA paragraphs A through D. The Subrecipient shall be responsible for compliance by any Contractor (including lower- tier subcontractors).

E. The Subrecipient or Contractor shall maintain payrolls and basic payrolls in accordance with Davis-Bacon Act Requirements term, for all laborers and mechanics, including guards and watchmen working on the Subaward or Contracts. These records are subject to the requirements set forth in the Davis Bacon Requirements term.

From 10 CFR 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 sub-grantees will follow paragraphs (b) through (i) in this section.

Note: 600.236 (i)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (i) of this section (1) through (13).

10 CFR 600.236 -- <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c8888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

From 10 CFR 600.237-Subgrants

Retention and Access Requirements for Records

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9;idno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

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Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies (refer state to 10 CFR 600.221(c)).

10 CFR 60.221(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.