



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

LEGAL AD DATE: April 27, 2010

REQUEST FOR PROPOSALS
No. RFP-10-005-SID

SEALED OFFERS
FOR

PUBLIC RELATIONS SERVICES FOR THE HAWAII CLEAN ENERGY INITIATIVE

The Hawaii Clean Energy Initiative's (HCEI) goal is to transform Hawaii from the most fossil fuel-dependent state in the Nation to a clean energy economy based on 70 percent clean and renewable energy. We are focused on two primary goals as we move Hawaii towards clean energy independence: (1) Conserve (use what we need efficiently) by moving towards a more energy-efficient lifestyle and (2) Convert (harnessing energy from renewable energy technologies such as solar, photovoltaics, wind, ocean, geothermal, interisland cable, biomass, biofuels, etc.). Public relations services are requested to maximize HCEI's visibility and position Hawaii as a model for the rest of the nation as we move towards a clean energy economy.

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

WILL BE RECEIVED UP TO 11:00 A.M. (HST) ON

MAY 28, 2010

IN THE CONTRACTS OFFICE, 235 S. BERETANIA ST., 5TH FLOOR, ROOM 503,
HONOLULU, HAWAII 96813. PLEASE DIRECT QUESTIONS RELATING TO THIS
SOLICITATION TO MS. SUSAN GRAY-ELLIS AT FACSIMILE (808) [586-2536] OR E-MAIL
AT SGRAY-ELLIS@DBEDT.HAWAII.GOV

Bid documents may be obtained from the DBEDT/SID/CONTRACTS OFFICE at the address described above. The RFP may also be accessed via the following URL:
<http://governmentnotices.state.hi.us> (click on State and County Procurement Notices).

/s/

Theodore A. Peck, Administrator
Strategic Industries Division

REQUEST FOR PROPOSALS

The Department of Business, Economic Development, and Tourism
Strategic Industries Division

Solicitation No. RFP-10-005-SID

PUBLIC RELATIONS SERVICES FOR THE HAWAII CLEAN ENERGY INITIATIVE

Pursuant to the Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes, the State of Hawaii Department of Business, Economic Development, and Tourism (DBEDT) Strategic Industries Division (SID) is soliciting proposals for PUBLIC RELATIONS SERVICES FOR THE HAWAII CLEAN ENERGY INITIATIVE.

Project Description:

The Department of Business, Economic Development, and Tourism is seeking proposals from qualified Offerors for PUBLIC RELATIONS SERVICES FOR THE HAWAII CLEAN ENERGY INITIATIVE. In 2008, the State and the U.S. Department of Energy signed a Memorandum of Understanding establishing the Hawaii Clean Energy Initiative (HCEI) with an overall goal to transform Hawaii from the most fossil fuel-dependent state in the Nation to a clean energy economy based on 70 percent clean and renewable energy by 2030.

We are focused on the following goals as we move Hawaii towards clean energy independence: (1) encouraging behavioral change that moves people to commit to a more energy-efficient lifestyle, (2) lay the policy and regulatory foundation for achieving HCEI's goal, and (3) establishing a sustainable renewable technology base by generating 40 percent of our energy locally and harnessing energy from technologies including, but not limited to, solar, photovoltaics, wind, ocean, geothermal, biomass, interisland cable, bioenergy.

Requirements:

All written questions must be submitted to the DBEDT/SID/Contracts Office by 11:00 a.m., Hawaii Standard Time (HST) on Wednesday, May 5, 2010.

Proposals shall be received up to 11:00 a.m., HST, on Friday, May 28, 2010, in the DBEDT/SID/Contracts Office, State of Hawaii, 235 S. Beretania St., Room 503, Honolulu, Hawaii, 96813. Request for Proposal (RFP) documents may be obtained from said office between the hours of 8:30 a.m. to 11:30 a.m. and 1:30 p.m. to 4:00 p.m., Monday through Friday, except for State holidays and furlough days. Please call 808 587-9002 to make arrangements for pickup. You may also download from <http://governmentnotices.state.hi.us/> Click on State & County Procurement Notices link. All interested parties must register with said office at the time the RFP documents are requested.

All proposals must comply with the attached DBEDT General Conditions (GC) dated April 15, 2009. Offerors are encouraged to carefully read the entire RFP document. Proposals must be submitted on DBEDT proposal forms **with an original signature**. **If possible, original signature in blue ink is preferred.**

All proposals must comply with Section 3-122-112, Hawaii Administrative Rules (HAR). Offeror is advised that if awarded a contract under this Solicitation, upon award of the contract Offeror shall furnish proof of compliance with the requirements of Section 103D-310(c), HRS:

- 1) HRS Chapter 237, Tax Clearance;
- 2) HRS Chapter 383, Unemployment Insurance;
- 3) HRS Chapter 386, Workers' Compensation;
- 4) HRS Chapter 392, Temporary Disability Insurance;
- 5) HRS Chapter 393, Prepaid Health Care;
- 6) Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State
- 7) One of the following:
 - a. Be registered and incorporated or organized under the laws of the State, hereinafter referred to as a "Hawaii business"; or
 - b. Be registered to do business in the State, hereinafter referred to as a "compliant non-Hawaii business;" and
- 8) General Liability and Automobile Insurance (per Comptroller's memos).

NOTICE TO INTERESTED PARTIES
IMPORTANT: PLEASE READ BEFORE DOWNLOADING

This solicitation is provided to you for information purposes and is not an official document unless you register your company.

If interested in responding to this solicitation, you may choose to submit your offer on the downloaded document provided you register your company by fax or email for this specific solicitation.

All interested Offerors **MUST** register. To register, please provide the information specified under "Registration". If you do not register, any applicable Addenda will not be sent to you, and your proposal will not be accepted.

SEND REGISTRATION TO SUSAN GRAY-ELLIS:

Email:	sgray-ellis@dbedt.hawaii.gov
Internet Notification:	http://governmentnotices.state.hi.us/ Click on "State & County Procurement Notices" link Click on "Search Procurement Notices" link Search Agency: Department of Business, Economic Development, and Tourism

Provide the following information:

⊕ Name of Company	⊕ Mailing Address
⊕ Name of Contact Person	⊕ Telephone Number
⊕ Facsimile Number	⊕ Solicitation Number
⊕ Email Address	⊕ FedEx (or equivalent) account number.

If provided, documents will be charged to your account (Documents will be sent U.S. Postal Service first class mail if this is not provided.)

THERE ARE THREE WAYS TO RECEIVE A COPY OF THIS SOLICITATION:

- 1. Download this solicitation from the following pages provided you register your company as stated above. Go to:**
<http://governmentnotices.state.hi.us/>
Click on "State & County Procurement Notices" link
Click on "Search Procurement Notices" link
Search Agency: Department of Business, Economic Development, and Tourism
- 2. You may pick up a copy of the solicitation in person.** Please call (808) 587-9002 to make pick up arrangements. There will be a twenty-five cent (\$0.25) per page charge.

3. Request a copy of this Solicitation to be mailed:

There will be a copying charge of twenty-five cents (\$0.25) per page.

Mail request to: Susan Gray-Ellis
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, HI 96804

E-Mail request to: sgray-ellis@dbedt.hawaii.gov

Provide the following information:

- | | |
|--|-----------------------|
| ⊕ Name of Company | ⊕ Mailing Address |
| ⊕ Name of Contact Person | ⊕ Telephone Number |
| ⊕ Facsimile Number | ⊕ Solicitation Number |
| ⊕ Email Address | |
| ⊕ FedEx (or equivalent) account number (document will be sent by U.S. Postal Service first class mail if this is not provided) | |

ADVISORY NOTICE TO INTERESTED OFFERORS

1. ALL PROPOSALS MUST BE SUBMITTED ON THE PROPOSAL FORMS PROVIDED WITH THIS REQUEST FOR PROPOSALS. FAILURE TO SUBMIT ON SUCH FORMS MAY RESULT IN DISQUALIFICATION.
2. ALL INTERESTED PARTIES **MUST** REGISTER WITH THE DBEDT/SID/CONTRACTS OFFICE.
3. ALL WRITTEN QUESTIONS MUST BE RECEIVED BY DBEDT/SID/CONTRACTS OFFICE BY THE DATE AND TIME INDICATED IN THE SIGNIFICANT DATES SECTION.
4. ALL PROPOSALS MUST BE RECEIVED BY THE DBEDT/SID/CONTRACTS OFFICE BY THE DATE AND TIME INDICATED IN THE SIGNIFICANT DATES SECTION.
5. PROPOSAL SUBMISSIONS MUST INCLUDE AN ORIGINAL SIGNATURE AND ONE (1) UNBOUND ORIGINAL AND FOUR (4) COPIES, PLUS ONE (1) CD OR DVD COPY. FAILURE TO SUBMIT PROPOSALS AS PRESCRIBED MAY RESULT IN DISQUALIFICATION. IF POSSIBLE, AN ORIGINAL SIGNATURE IN BLUE INK IS PREFERRED.
6. OFFERORS ARE CAUTIONED TO MAKE PRIOR ARRANGEMENTS TO ENSURE DELIVERY BY THE PROPOSAL DUE DATE AND TIME.
7. ALTHOUGH NOT REQUIRED FOR SUBMISSION, DBEDT STRONGLY SUGGESTS THAT ALL OFFERORS THAT SUBMIT PROPOSALS COMMENCE GATHERING OF COMPLIANCE DOCUMENTATION REQUIRED IN RFP SECTION 5.26 Award of Contract.

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Public Relations Services for the Hawaii Clean Energy Initiative

TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

BAFO	= Best and Final Offer
Benchmarking	= Energy benchmarking is a method where an assessment is made of an individual building's energy performance, water efficiency, carbon emissions reduction, and other metrics and compared with similar performance assessments of similar buildings
CPO	= Chief Procurement Officer
DBEDT	= Department of Business, Economic Development, and Tourism, No. 1 Capitol District, 250 S. Hotel St., 5 th Floor, Room 503, Honolulu, Hawaii 96813
ESTAR Certified	= This certification is awarded to buildings identified by Energy Star Portfolio Manager as buildings performing better than 75% of all similar buildings nationally
ESTAR PORTFOLIO MANAGER=	An interactive energy management tool designed to help building owners and managers collect data to benchmark buildings and calculate key metrics such as energy intensity and costs, water use, and carbon emissions.
GC	= General Conditions, issued by the Department of the Attorney General
GET	= General Excise Tax
HAR	= Hawaii Administrative Rules
HRS	= Hawaii Revised Statutes
LEED	= Leadership in Energy and Environmental Design rating system

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Offeror	= Any business entity submitting an offer in response to this solicitation.
Procurement Officer	= The Contracting Officer for the State of Hawaii, Department of Business, Economic Development, and Tourism
RCx	= Retrocommissioning is a planned, coordinated and documented process of reviews and testing applied to existing buildings whereby the desired design, installation, performance, maintenance and operational criteria of various building systems are established and verified.
RFP	= Request for Proposals
State	= State of Hawaii, including each department and political subdivision

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INTRODUCTION AND KEY DATES

The Hawaii Department of Business, Economic Development, and Tourism desires to contract with qualified Offerors to provide PUBLIC RELATIONS SERVICES FOR THE HAWAII CLEAN ENERGY INITIATIVE.

1.01 CANCELLATION

The RFP may be cancelled and any or all proposals rejected in whole or in part, without liability, when it is determined to be in the best interest of the State.

1.02 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule set out herein represents the State's best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposal Due" date is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Advertising of Request for Proposals	April 27, 2010
Deadline to Submit Written Questions	May 5, 2010
State's Response to Written Questions Published	May 12, 2010
Proposal Due Date	May 28, 2010
Proposal Opening	June 1, 2010
Discussion with Priority Listed Offerors, if necessary	June 21-24, 2010
Submission of Best and Final Offer, if appropriate	July 2, 2010
Estimated Contract Award (approximate)	July 9, 2010

1.03 OFFICIAL CONTACT PERSON FOR DBEDT

Susan Gray-Ellis
Department of Business, Economic Development, and Tourism
SID / Contracts Office
235 South Beretania St, 5th Floor, Room 503
Honolulu, Hawaii 96813
sgray-ellis@dbedt.hawaii.gov
Telephone: (808) 587-9002

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.01 PROJECT OVERVIEW AND HISTORY

The State of Hawaii and the U.S. Department of Energy (DOE) signed an unprecedented Memorandum of Understanding (MOU) with an overall goal to transform Hawaii from the most fossil fuel-dependent state in the Nation to an economy based on 70 percent clean and renewable energy within a generation (by 2030). The MOU established the Hawaii Clean Energy Initiative, designed to accelerate the transformation of Hawaii into one of the world's first economies based primarily on clean energy resources.

We are focused on two primary goals as we move Hawaii towards clean energy independence:

Conserve: Use What We Need Efficiently

- Commit to a more energy-efficient lifestyle.

Convert: Harness What We Have Wisely

- Generate 40% of our energy locally by 2030.
- Harness energy from solar, wind, ocean, geothermal, biomass resources, PV, Interisland cable, bioenergy, and other alternative energy sources
- Establish a sustainable alternative-fuel strategy.
- Embrace hybrid and electric vehicles.
- Modernize our power-grid system.

Through the collaborative efforts with national partners (i.e., U.S. DOE, National Renewable Energy Laboratory, etc.), state and county leaders, legislators, utilities, community, business, education and energy industry representatives, we need to build upon HCEI's ongoing work to:

- Define the new infrastructure needed to move Hawai'i to a clean energy economy.
- Foster and demonstrate innovation in the use of clean energy technologies, create investment and financing opportunities, and public policy to accelerate our transition to clean energy.
- Create economic opportunity at all levels of society by developing and diversifying Hawai'i's economy so all of us reap the benefits of a sustainable energy policy.

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- Establish an "open source" learning model that supports other island communities seeking to achieve similar goals and makes Hawai'i a world model for clean energy-based economies.
- Build our workforce with new skills that will form the foundation of an energy-independent Hawaii.

Hawaii is the most fossil fuel-dependent state in the nation. Presently, Hawaii depends on imported fossil fuel for 86% of the State's total energy needs. Nearly 80% of the State's electricity is generated using petroleum fuels and slightly over 97% of its transportation fuels are produced from foreign oil. This reliance on imported and foreign fossil fuels translates into a \$7 billion annual outflow of state resources to meet Hawaii's energy needs. Hawaii residents pay the nation's highest prices for electricity and are paying the nation's second highest fuel prices.

In 2009, the local and national economic downturn leading to the downsizing of businesses, loss of jobs, resource constraints, and increasing economic risk from extreme overdependence on higher-priced imported crude oil made the State's energy goals even more critical. Reducing our oil dependence and its consequent price volatility, thereby attaining a measure of energy security is a major goal, and even more critical now to our State's economic and environmental well-being.

DBEDT's State Energy Office oversees statewide energy programs to achieve the following:

- Reduction in the use and importation of fossil fuels;
- Fundamental changes in how Hawai'i consumes energy;
- Developing and utilizing more indigenous renewable resources;
- Reducing greenhouse gas emissions;
- Enhancement and preserving the State's energy security; and
- Developing significantly increased investment in the Hawai'i energy economic sector.

2.02 SCOPE OF WORK

The Scope of Work encompasses the development and implementation of a strategic communications plan that moves us towards reaching HCEI's goal of 70% clean energy by 2030.

We are focused on the following goals as we move Hawaii towards clean energy independence: (1) encouraging behavioral change that moves people to commit to a more energy-efficient lifestyle, (2) laying the policy and regulatory foundation for achieving HCEI's goal, and (3) establishing a sustainable renewable technology base by generating 40 percent of our energy locally and harnessing energy from technologies including, but not limited to, solar, photovoltaics, wind, ocean, geothermal, biomass, biofuels, electric vehicles, interisland cable.

The proposal should include, at minimum, the following major components:

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- Development of a comprehensive communications plan to increase HCEI's visibility and public awareness, showcasing major milestones and initiatives that encourage the use of energy-efficient and renewable energy technologies in the areas of solar, photovoltaics, bioenergy, interisland cable, wind, interisland cable, geothermal, wave, electric vehicles, building efficiency, energy conservation, energy policy/planning (Feed in Tariff, decoupling, etc.), Hawaii Clean Energy Bond Program, etc.
- Development of a strategic media relations plan that maximizes HCEI's accomplishments and Hawaii's leadership for local, national and international audiences. The plan should include development of key communications messaging; use of traditional media (i.e., print, television, radio) and social marketing tactics (i.e., Facebook, twitter, blogs, etc.); writing news releases, media advisories, backgrounders, Op-Eds, letters to editors, commentaries, articles, etc. and appropriate media placement to increase HCEI visibility.
- Identification and implementation of strategies to reach **statewide** targeted audiences (i.e., energy industry representatives, clean energy users, commercial and residential property owners, general public) **AND** identification and implementation of strategies to reach **national and international** energy practitioners and energy industry representatives that raises awareness of HCEI, encourages business-to-business opportunities and stimulates job growth for Hawaii.
- Conducting HCEI community assessment, data collection, "talk story sessions", telephone and door to door evaluation surveys to help focus communication messaging for targeted audiences, especially on the islands of Maui, Molokai, Lanai, Kauai, and the Big Island. This includes the implementation of community grass-roots outreach campaigns for each island and coordination of community meetings.
- Developing a comprehensive HCEI calendar of events, activities, news conferences, etc. that generates increased awareness of HCEI's key milestones and accomplishments.
- Contractor will research, write articles, provide content, photo/captions, etc. for inclusion on the Hawaii Clean Energy Initiative (HCEI) website at (www.hawaiicleanenergyinitiative.org) and DBEDT website at (www.hawaii.gov/dbedt/info/energy). Contractor will also:
 - Research and gather information on major energy projects statewide;
 - Develop energy fact sheets;
 - Develop a statewide energy map for HCEI's website;
 - Assist in the placement of website articles in local and national energy-related e-newsletters, e-magazines, and other related web media outlets;
 - Post energy-related articles (local, national and/or international coverage) on HCEI's website;
 - Provide content management, supporting photographs, graphics, video/b-roll footage, etc. to increase HCEI's website usage for consumers, businesses, government, military, and education sectors

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- Update data and statistical content, including but not limited to, ARRA-related articles, news releases, photos, graphics, etc. for DBEDT's State Energy Office's ARRA website at (www.gov/recovery/energy); and
- Update content, graphics and/or photographs for the Asia-Pacific Clean Energy Summit website at (www.asiapacificcleanenergy.com).
- Contractor will create, develop, and produce HCEI collateral materials, powerpoint presentations, etc. for targeted audiences.
- Contractor will take part in public meetings on the islands of Oahu, Molokai, Lanai, Maui, and Kauai for the interisland cable environmental impact statement (EIS) and develop briefing materials, story boards, media and information packets.

2.03 COMPENSATION

1. The award shall be made on a firm, fixed fee, including all taxes.
2. Only Proposals priced at or below \$500,000 shall be considered.
3. Payments shall be made in predetermined installments contingent on the State's approval of specific deliverables or progress reports.
4. The Contractor shall perform all of the above requirements within but not to exceed the amount specified by Contract; the Contract may be extended and additional funding provided depending upon circumstances such as receipt of additional federal funds, reallocation of existing funds, and others.
5. The Offeror's budget for the project shall be prepared by category, detailing firm-fixed hourly rates which shall include all benefits, as applicable to appropriate personnel classifications. Overhead, travel, printing, other costs and taxes shall be accounted for separately. Benefits, overhead and profit rates shall be provided. If proposed, a separate budget shall be prepared for in-kind/cost share support by category and task.

2.04 TERM OF CONTRACT

The contract shall be for a period beginning on the date of execution of the contract and ending April 30, 2012. In the event that the ARRA funds may be extended, the State may extend the term of the contract for an additional period of up to five (5) years or portions thereof without the necessity of re-bidding, upon mutual agreement in writing at least sixty (60) days prior to the expiration of the contract. The contract price or commission paid to the Contractor for the extended period shall remain the same or be renegotiated. Due to Federal Grant requirements, it is possible that no extension may be granted. In the event the Federal Grant requirements change, additional funds may be added and the contract term may be extended.

When interests of the State so require, the State may terminate the contract for convenience by providing six (6) weeks prior written notice to the contracted parties.

Public Relations Services for the Hawaii Clean Energy Initiative

2.05 ARRA REPORTING REQUIREMENTS

- (1) **General.** This Contract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA") and Federal Regulations and other guidance from the federal government implementing the ARRA, and the Contractor agrees that it shall comply with all ARRA requirements applicable to this Contract, and acknowledges that such requirements may be amended from time to time. In the event of a conflict between the terms of this Contract and the ARRA requirements, the provisions of the ARRA requirements shall be controlling. The Contractor also agrees that it shall provide all information and documentation required by the federal government and the State of Hawaii in order to comply with the ARRA requirements.
- (2) **Availability of Funds.** Funds appropriated under the ARRA are available for reimbursement of costs until April 30, 2012.
- (3) **DUNS Number.** The Contractor shall provide the Department of Business, Economic Development, and Tourism ("DBEDT") with their Dun & Bradstreet Data Universal Numbering System ("DUNS") (www.dnb.com).
- (4) **Central Contractor Registration.** The Contractor shall maintain current registration in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with ARRA funds. A DUNS number is one of the requirements for registration in the Central Contractor Registration.
- (5) **Reporting Requirements.** Under ARRA, there are two categories of recipients of funds from the State—sub-recipients and vendors—which have different reporting requirements. Each contract, Memorandum of Agreement, or Memorandum of Understanding will define the Contractor as either a sub-recipient or vendor for ARRA reporting purposes. The Contractor under this solicitation shall be defined as a vendor for ARRA reporting purposes. Pursuant to Section 1512 of the ARRA, state agencies receiving ARRA funds must submit a report to the federal government no later than ten (10) calendar days after the end of each calendar quarter. Accordingly, the Contractor, depending on the Contractor's category as either a subrecipient or vendor, shall provide DBEDT with the following information no later than two (2) calendar days after the end of each calendar quarter:
 - a. Award Number (Prime Recipient Vendor) –Identifying number assigned by the prime recipient.
 - b. Vendor DUNS Number – The vendor's 9-digit Data Universal Numbering System (DUNS) number or
 - c. Vendor Name – The name of the vendor and the zip code of the vendor's headquarters (Zip Code + 4).
 - d. Product and Service Description – A description of the product and/or service provided by the vendor.
 - e. Payment Amount – The amount paid (with ARRA funds) to the vendor.
 - f. FTE (Full-Time Equivalent) of number of direct jobs created and FTE of number of direct jobs retained (FTE=Hours Worked/Hours in a Full-Time Schedule).
 - g. Description of direct jobs created and description of direct jobs retained.

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Spreadsheets detailing these reporting requirements can be found at <https://www.federalreporting.gov/federalreporting/home.do>

Detailed information on any subcontract awarded by the Contractor must include the information required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).

The Contractor shall maintain records that identify adequately the source and application of ARRA funds, to maximize the transparency and accountability of ARRA funds, in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and Office of Management and Budget ("OMB") Circular A-102 Common Rules provisions (relating to Grants and Cooperative Agreements with State and Local Governments).

The Contractor agrees to separately identify the expenditures for federal awards under the ARRA on the Schedule of Expenditures of Federal Awards ("SEFA") and the Data Collection Form ("SF-SAC") required by OMB Circular A-133. This condition only applies if the contractor is covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." This shall be accomplished by identifying expenditures for federal awards under the ARRA 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.

The Contractor may be required to submit backup documentation for expenditures of ARRA funds, including such items as timecards and invoices.

Reports submitted must not contain protected personal identifiable information, limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

Failure to comply with the reporting requirements is considered a material noncompliance with the terms of this Contract.

- (6) **Segregation of Funds.** The Contractor shall segregate the obligations and expenditures related to ARRA funds. The Contractor shall track, account for, and report on all ARRA funds (including specific outcomes and benefits attributable to ARRA funds) separately from all other funds. Accordingly, the Contractor's accounting system must ensure that ARRA funds are not commingled with funds from any other source. Personnel whose activities are to be charged to this Contract shall maintain timesheets to document hours worked for activities related to this Contract.
- (7) **Enforceability.** The Contractor shall comply with all applicable federal and state requirements governing the use of ARRA funds. Failure to comply may result in the withholding of payments, suspension, or termination of this Contract, and the recovery of misspent funds. A willful failure to perform or unsatisfactory performance may also result in a debarment action to preclude future contracts. This provision is

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in addition to all other remedies available to the State of Hawaii under all applicable state and federal laws.

- (8) **American Made Equipment and Products.** It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under an ARRA award should be American-made.
- (9) **National Environmental Policy Act (“NEPA”) and Related Federal Laws.** The Contractor understands that U.S. Department of Energy awards are subject to NEPA, 42 U.S.C. section 4321 et seq., and other related federal laws (including the Endangered Species Act of 1973, 16 U.S.C. 1531-1543, and the Historic Preservation Act of 1966, 16 U.S.C. 470f). The Contractor agrees to comply with all applicable environmental laws and to assist the U.S. Department of Energy and the State of Hawaii in carrying out their responsibilities under NEPA and related laws.

Federal funds shall not be used for actions which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to either a NEPA clearance or a final NEPA decision. Prohibited actions include:

- a. Purchase and implementation of technologies involving the capture and use of methane and other greenhouse gases generated from mines, oil and gas fields, water treatment facilities, landfills or other sources;
 - b. Financial programs for energy efficiency improvement prospects;
 - c. Grants for energy efficiency retrofits to power generation facilities;
 - d. Development of non-highway transportation infrastructure to include limited access roads, bike trails, pedestrian walkways, riding trails, ATV trails, rails to trails, boat ramps/marina facilities;
 - e. Renewable energy installations including solar, wind fuel cells, and biomass;
 - f. Alternative fuel infrastructure;
 - g. Energy efficiency retrofits and improvements;
 - h. Bike lanes, pathways, and pedestrian walkways; and
 - i. Implementation of technologies to reduce, capture and use methane and other greenhouse gases generated by landfills or similar sources.
- (10) **Nondiscrimination.** The Contractor agrees to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), and the Energy Conservation and Production Act of 1976, as amended (Pub. L. 94-385), and Title 10, Code of Federal Regulations, Part 1040.
- (11) **Drug-Free Workplace.** The Contractor shall comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

(12) **Subcontractor Flow-Down Requirements.** The Contractor shall include these special terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009. The Contractor further agrees to be responsible for oversight of its subcontractors' spending and for monitoring the specific outcomes and benefits attributable to the use of the ARRA funds by its subcontractors.

(13) **Conflict between this Contract and ARRA Reporting Requirements**

- a. In the event of a conflict between the terms of this Contract and the ARRA requirements, the provisions of the ARRA requirements shall be controlling. The Contractor also agrees that it shall provide all information and documentation required by the federal government and the State in order to comply with the ARRA requirements.
- b. DBEDT shall be responsible for reporting to the U.S. Department of Energy. For the purpose of this contract, the CONTRACTOR will be considered a VENDOR. All subcontracts that Contractor enters into as part of the contract shall be subject to these ARRA reporting requirements. Contractor shall be responsible to report to DBEDT, the reporting elements on a monthly, quarterly, or weekly basis, as appropriate.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.01 INTRODUCTION

One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be fair and objective. When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP. Part or all of this RFP and successful proposal may be incorporated into the contract.

All submittals shall become the property of the State of Hawaii and shall not be returned.

The proposal shall be organized into sections with tabbed dividers. Offeror shall provide one (1) Unbound Original Proposal with tabbed sections plus four (4) bound copies (total of five (5) copies) of the proposal, plus one (1) DVD or CD of the proposal in electronic format. The bound copies shall be in soft sided 3-ring binders.

Suggested General Organization of the Proposal

1. Transmittal Letter and Qualifications; Corporate Resolution, if applicable, Offer Form OF-1; Offer Form OF-2; Attachment 4-Certificate of Compliance for Final Payment: See Attachments 1-4
 2. Experience and Capabilities: See Section 3.04
 3. Strategy and Timelines: See Section 3.05
 4. Approach: See Section 3.05
 5. Work Plan and Schedule: See Section 3.05 The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 2.02 SCOPE OF WORK.
 6. Subcontractors: See Section 3.05
 7. Pricing (Budget): See Section 3.06
 8. Cash or in-kind match: See Section 3.05
 9. Exceptions
- Appendix: Other information supporting the proposal

Failure to comply with any of the following requirements may be grounds for rejection of the proposal.

3.02 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

- (1) **TRANSMITTAL LETTER.** Proposal Transmittal Letter and Qualifications shall be included to confirm that the Offeror shall comply with the requirements, provisions, terms and conditions specified in the RFP. The letter should be on Offeror's official business letterhead and signed by an individual or individuals authorized to legally bind the Offeror.

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- (2) **OFFER FORM OF-1.** Offeror is required to include a signed Offer Form OF-1 with the complete name and address of Offeror's firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Offeror's proposal. Offeror shall submit Offeror's exact legal name as registered with the DCCA, if applicable, and to indicate exact legal name in the appropriate space on Offer Form OF-1. Failure to do so may delay proper execution of the contract.
- (3) **OFFER FORM OF-2.** Offeror is required to include a signed Offer Form OF-2 summarizing Offeror's pricing, including hourly rates inclusive of all taxes and other costs) for each of the personnel assigned to the project. See Section 3.06. Failure to do so may delay proper execution of the contract.
- (4) The authorized signature on the first page of the Transmittal Letter and Offer Forms shall be an original signature; if possible blue ink is preferred. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall automatically be rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.
- (5) The original proposal transmittal letter shall be clearly marked "ORIGINAL" on the upper right hand corner of the cover page and have an original signature, preferably signed in **blue ink**. Copies shall be clearly marked "COPY." DO NOT SUBMIT MORE THAN ONE ORIGINAL. The State will not provide any reimbursement for the cost of developing, submitting, or evaluating any proposals in response to the RFP.
- (6) The Unbound Original Proposal (in a sealed envelope) plus four (4) copies (total of five (5) copies) of the Proposal, plus one (1) DVD or CD, shall be submitted in a sealed package to:

State of Hawaii, Department of Business, Economic Development, and Tourism
SID Contracts Office
Attn: Susan Gray-Ellis
235 S. Beretania St., 5th Floor, Room 503
Honolulu, Hawaii 96813
- (7) "Solicitation No. RFP 10-005-SID" shall be referenced on the outside of the sealed proposals. **Facsimiles and/or emails of the proposal shall not be accepted.**
- (8) **The DBEDT/SID/CONTRACTS OFFICE must receive sealed proposals no later than the date indicated in "Significant Dates" in the RFP Section 1.02 RFP Schedule and Significant Dates. Proposals shall be time-stamped with the DBEDT/SID/CONTRACTS OFFICE date/time stamp upon receipt. Late proposals shall not be accepted. The DBEDT/SID/CONTRACTS OFFICE OFFICE time clock shall serve as the official time.**
- (9) Offerors are cautioned to make prior arrangements to ensure delivery by the proposal due date. Offers received after the deadline shall be returned unopened.

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- (10) Offerors are to complete and submit the documents contained in the RFP "Proposal" and a project proposal as described in Section 3.03.
- (11) Offer Guaranty. An offer guaranty is NOT required for this RFP.
- (12) Tax Liability. Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Vendors are advised that they are liable for the Hawaii GET at the current rate and the applicable use tax at the current rate. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.
- (13) Taxpayer Preference. For evaluation purposes, pursuant to HRS §103D-1008, the Offeror's tax-exempt price offer submitted in response to an IFB (Sealed Bid) shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.
- (14) Offeror is required to submit typewritten offers. No handwritten proposals will be accepted. Offeror is cautioned that illegible offers of any item(s) may be automatically rejected to avoid any errors in interpretation by the reviewers during the evaluation process.
- (15) Costs for developing the Proposal are solely the responsibility of the Offeror, whether or not any award results from this solicitation. The State of Hawaii will not reimburse such costs.
- (16) An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an Offeror may submit only one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected.
- (17) All proposals become the property of the State of Hawaii.

3.03 OFFEROR'S COVENANTS AND QUALIFICATIONS

- (1) Proposals shall include completed proposal pages in Attachments 1, 2, and 3. Remove, complete, and submit the required number of copies for each document in the "Proposal" section.
- (2) The proposal must be signed by an authorized representative, and the corporate resolution or evidence of authorization to bind must be attached.
- (3) PLEASE NOTE: The name of the organization filing the proposal must match the name which is either legally registered with the DCCA for Hawaii corporations, partnerships, or trade names, or the DOTAX for sole proprietors who do not have registered trade names with the DCCA. An out-of-state organization must be legally registered with its appropriate state.

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- (4) If more than one entity is included or subcontractor(s) will be used, append a statement to the Transmittal Letter from each selected subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:
 - a. The general scope of work to be performed by the subcontractor.
 - b. The subcontractor's willingness to perform for the indicated price.
 - c. No award will be made to any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal Assistance Programs.
- (5) The proposal must provide all of the information requested in this RFP in the order specified.

3.04 EXPERIENCE AND CAPABILITIES

- (1) Provide a complete, related and current client listing (or major firms with whom Offeror has contracted).
- (2) Indicate the number of years Offeror has been in business and the number of years Offeror has performed services specified by this RFP.
- (3) Include a list of key personnel and associated resumes for those who will be dedicated to this project.
- (4) Offeror shall include a list of at least three (3) references from the Offeror's client (contractor) listing that may be contacted by the State as to the Offeror's past and current job performance. Offeror shall provide names, titles, organizations, telephone numbers, email and postal addresses.
- (5) Provide a summary listing of judgments or pending lawsuits or actions against Offeror; adverse contract actions, including termination(s), suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against Offeror. If none, so state.
- (6) Provide sample projects and/or examples of written plans.

3.05 PROPOSAL, STRATEGY, AND PROJECTED TIMETABLE

The proposal must be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually and pages must be numbered.

- (1) **Forms:** See Attachment 1-Transmittal Letter, Qualifications Letter, Corporate Resolution, Attachment 2- Offer Form OF-1; Attachment 3- Offer Form OF-2; Attachment 4-Certificate of Compliance for Final Payment

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(2) **Experience and Capabilities:** See Section 3.04

- a. Client listing.
- b. Number of years in business
- c. Listing of key personnel and associated resumes for those who will be dedicated to this contract.
- d. Listing of references.
- e. Summary listing of judgments or pending lawsuits or legal actions.
- f. Samples of projects similar to those described in this RFP.

(3) **Strategy and Timeline.** The proposal must include an overall strategy, timeline, and plan for the work proposed as well as expected results and possible shortfalls.

(4) **Approach**

- a. The Offeror's approach, including a description of the entire project, and strategy and detailed plan to effectively carry out the tasks described in the "Scope of Work," Section 2.02.
- b. A delineation of any anticipated problems and risk factors, and proposed solutions and approaches to mitigate project risks.

(5) **Work Plan and Time Schedule.** This section shall include a detailed work plan for the tasks required to produce each of the deliverables covered by this RFP. The Offeror should describe the timing and logistics of the work plan and the key issues involved.

All proposals must contain a time schedule for the completion of all major tasks. The timeline shall include, but not be limited to: description of each task, duration of each task, schedule of tasks, milestones, and schedule of deliverables and/or periodic progress reports with date of submission. The Contract shall be implemented by Work Orders.

(6) **Subcontractors.** All proposals must include a listing of tasks from Section 2.02 Scope of Work for which subcontractors would be employed, and for each such task a justification for employing a subcontractor, the approach to identifying the subcontractor, the scope of subcontractors' task/s, and a description of expertise necessary to complete each task.

(7) **Pricing (Budget).** See Section 3.06 Pricing.

(8) **Cash or In-kind Match.** Offeror shall indicate percentage of cost, and amount, or in-kind match to be provided to support the project.

(9) **Exceptions.**

3.06 PRICING

- (1) The Offeror's budget for the project shall be prepared by category, detailing firm-fixed hourly rates which shall include all benefits, as well as General and Administrative Expenses (G&A) and overhead, as applicable to appropriate

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personnel classifications. Overhead, travel, printing, other costs and all applicable taxes and profit shall be accounted for separately. Benefits, G&A, overhead and profit rates shall be provided. A separate budget shall be prepared for in-kind/cost share support by category and task. The General Excise Tax (GET) shall not exceed the current rate (See 3.06 (3)).

- (2) A payment plan shall be submitted that details proposed payment amounts for each milestone or deliverable that the Offeror completes and is approved by STATE.
- (3) Offeror may be subject to the Hawaii GET at its current rate by Chapter 237, HRS. If an Offeror is a person exempt from paying the GET and therefore not liable for taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

3.07 EXCEPTIONS

Offeror shall list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any.

3.08 WITHDRAWAL OF OFFER

- (1) Copies of documents transmitted by Offeror via facsimile machine or other electronic method shall be limited to modifications or withdrawal of an offer pursuant to HAR 3-122-16.07.
- (2) Bids or proposals submitted pursuant to HAR 5, 6, and 6.5 may be modified or withdrawn prior to the established due date by the following documents:
 - a. A written notice received in the office designated in the solicitation; or
 - b. A notice by facsimile machine or other electronic method pursuant to HAR 3-122-9, to the office designated in the solicitation.
- (3) For the purposes of this RFP, the established due date for proposals pursuant to HAR 6 or 6.5 is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the time and date by which best and final offers.

3.09 FEDERAL REPORTING REQUIREMENTS

Offeror should assume and accept the flow-down of all federal reporting and other requirements, including future federal requirements, and is advised that these changes will be provided to the selected Offeror/Contractor in writing.

SECTION FOUR

EVALUATION CRITERIA AND CONTRACTOR SELECTION

Evaluation Criteria and the associated points are listed below. The award will be made to the responsible Offeror/s whose proposal/s is determined to be the most advantageous to the STATE based on the evaluation criteria listed in this section.

4.01 PROPOSAL EVALUATION

The evaluation of proposals received in response to this RFP will be conducted comprehensively, fairly, and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

4.02 EVALUATION ORGANIZATION

The DBEDT Procurement Officer will initially review all proposals for timeliness of submission, format, and completeness. The proposals that meet the initial requirements of the RFP shall then be fully evaluated according to the criteria listed below by an evaluation committee. Proposals that only meet a portion or none of the initial requirements shall be rejected and disqualified from further review or consideration unless the Procurement Officer deems that initial requirement deficiencies are minor or may be clarified and corrected without resulting in an unfair advantage to the Offeror and is in the best interest of the STATE to not reject or disallow the proposal.

Overall, the proposal shall demonstrate that the Offeror understands the issues and has the ability to meet and satisfactorily produce all contractual requirements listed in the RFP, including all contractual services. The price must be realistic given the scope of work, and must illustrate an aggressive, competitive approach to maximizing the STATE's limited resources.

The evaluation will be conducted in six (6) phases:

- Phase 1 – Evaluation of General Requirements
- Phase 2 – Evaluation of Proposals
- Phase 3 – Establishment of Priority List of Offerors
- Phase 4 – Presentations of Top Three Priority-Listed Offerors
- Phase 5 – Submission of Best and Final Offers (if deemed necessary by the evaluation committee)
- Phase 6 – Recommendation for Award

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4.03 EVALUATION CATEGORIES AND THRESHOLDS (Total Possible Points – 200)

Proposal	Points
General Requirements	Pass/No Pass
Understanding of Contractor's Role and the STATE's Needs	10 points
Offeror Organization and Staffing	25 points
Offeror Performance and Experience	60 points
Offeror's Approach and Comprehensiveness of Proposal	75 points
Value-Added Innovation	30 points
TOTAL POSSIBLE POINTS:	200

4.04 Phase 1 - EVALUATION OF GENERAL REQUIREMENTS – (Pass/No Pass)

The DBEDT Procurement Officer or his/her designee shall evaluate each submission to ensure the proposal meets the general requirements as specified herein. Each proposal shall be evaluated on a "pass/no pass" basis. No points shall be assigned for these requirements. The purpose of this phase is to determine whether an Offeror's proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the general requirements ("no pass") will be grounds for deeming the proposal non-responsive to the RFP and may result in non-consideration of the proposal. Proposals meeting the general requirements ("pass") of Phase 1 will be considered in Phase 2.

The proposal shall be organized in the exact prescribed format using all titles, subtitles, and numbering, with each section being tabbed and separated into sections as listed below. Offeror shall include, without limitation, all of the information requested in this RFP in the order specified and pages must be numbered.

General Requirements for the Proposal:

1. Introductory Letter
2. Table of Contents
3. Executive Summary
4. Offeror Organization and Staffing
5. Offeror Performance and Experience
6. Offeror's Approach and Comprehensiveness of Proposal
7. Cost Proposal
8. Assumptions and Expectations

4.05 Phase 2 - EVALUATION OF PROPOSALS – (200 TOTAL POSSIBLE POINTS)

During this phase, the evaluation committee shall evaluate the Offeror's proposal against requirements specified in this RFP. Based on a 200-point scale, proposals must score a minimum of 150 points for further award consideration. Proposals scoring less than 150 points shall not be considered for project award.

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4.05-1. Understanding of this contractor's role and the STATE's needs (10 Points)

Proposals will be evaluated against the following criteria:

1. Has the Offeror demonstrated an understanding of the energy situation in Hawaii, the role of the Hawaii Clean Energy Initiative, identified pertinent energy issues and potential problems related to Hawaii's energy situation? – 4 points
2. Has the Offeror demonstrated a thorough understanding of the purpose and scope of this contractor's responsibilities as related to the requirements of this RFP? – 3 points
3. Has the Offeror demonstrated that it understands the importance of fulfilling deadlines and ability to meet the reporting deadlines to the STATE? – 3 points

4.05-2. Offeror Organization and Staffing (25 points)

Offeror's proposed organization and staffing resources will be evaluated to assess the Offeror's capability and commitment to carry out the duties and responsibilities of this RFP.

The evaluation committee will evaluate the key management personnel and other key personnel proposed for this contractor's responsibilities, based on experiences listed under the individual resumes. References for the proposed individual(s) assigned to this proposed projects will be checked. Reference checking is not limited to only those references supplied by the Offeror.

NOTE: If there are any changes in key personnel and/or staffing after the discussions and prior to submitting the BAFO, the Offeror must notify the STATE immediately. The State may choose to reevaluate the Offeror's proposal which may result in its removal from the Priority Listed Offerors.

Specifically, the proposal will be evaluated based on the following criteria:

1. Organization of in-house personnel and subcontractors assigned to the project (including professional background; memberships or affiliations; and years of hands-on experience with similar types of projects or programs – 10 points
2. Roles and responsibilities of all personnel assigned to the project – 8 points
3. Number of personnel assigned to the project – 5 points
4. Number of subcontractors assigned – 2 points.

4.05-3. Offeror Performance and Experience (60 points)

The evaluation committee will evaluate the experience and performance of the Offeror and subcontractors (if any).

2. Provide concrete examples of developing and implementing successful strategic communications plans for previous clients and Offeror's role – 8 points

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3. Offeror's experience in the development of a strategic media relations plan, strategies used, and successful placement in local, national and/or international papers, radio, tv, social marketing outlets, etc. – 9 points
 4. Offeror's experience in the development of key communications messaging, ability to write effectively (i.e., news releases, media advisories, backgrounders, Op-Eds, letters to editors, commentaries, articles, etc.) and demonstrated successful media placement locally and nationally – 9 points
 5. Offeror's experience in conducting community assessment, data collection and/or evaluation surveys and/or community grass-roots outreach campaigns to help focus communication messaging for targeted audiences, especially on the islands of Maui, Molokai, Lanai, Kauai, and the Big Island – 9 points
 6. Offeror's experience working with previous clients on energy-related issues such as interisland cable, solar, photovoltaics, bioenergy, biofuels, wind, geothermal, wave energy, electric vehicles, building efficiency, energy conservation, energy policy/planning (FiT, decoupling, etc.) – 7 points
 7. Offeror's experience working with federal, state, county, government agencies in areas relative to the required work described in this RFP – 4 points
 8. Offeror's experience in website management including content, photographs, graphic design, etc. and demonstrated success with previous clients – 7 points
 9. Offeror's experience and success with previous clients utilizing social marketing strategies (i.e., Facebook, twitter, blogs, etc.) – 7 points
- 4.05-4. Offeror's Approach and Comprehensiveness of Proposal (75 points)

The committee will evaluate the Offeror's approach and comprehensiveness of the proposal based on the following:

1. Development and implementation of a comprehensive communications plan to increase HCEI's awareness and visibility showcasing major milestones and initiatives that encourage the use of energy-efficient and renewable energy technologies in the areas of solar, photovoltaics, bioenergy, biofuels, wind, geothermal, wave energy, electric vehicles, building efficiency, energy conservation, energy policy/planning (FiT, decoupling, etc.), HCEI Hawaii Clean Energy Bond Program, and interisland cable –10 points
2. Development and implementation of a strategic media relations plan that maximizes HCEI's accomplishments and Hawaii's leadership for local, national and international audiences. Approach using traditional media (i.e., print, television, radio) and social marketing tactics (i.e., Facebook, twitter, blogs, etc.); writing news releases, media advisories, backgrounders, Op-Eds, letters to editors, commentaries, articles, etc. and appropriate media placement to increase HCEI visibility – 10 points

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3. Approach on the identification and implementation of strategies to reach **statewide** targeted audiences (i.e., energy industry representatives, clean energy users, commercial and residential property owners, general public) **AND** identification and implementation of strategies to reach **national and international** energy practitioners and energy industry representatives that raises awareness of HCEI, encourages business-to-business opportunities and stimulates job growth for Hawaii – 10 points
4. Website: Contractor will research, write articles, provide content, photo/captions, etc. for inclusion on the Hawaii Clean Energy Initiative (HCEI) website at (www.hawaiicleanenergyinitiative.org) and DBEDT website at (www.hawaii.gov/dbedt/info/energy). Objective is to increase traffic via search engine optimization to ensure that all websites gets a high ranking and increased usership – 15 points

Specific activities includes:

- Research and gather information on major energy projects statewide, develop energy fact sheets and develop a statewide energy map for HCEI's website.
- Research and write website articles on upcoming energy programs, activities, and significant achievements to showcase Hawaii's progress in the areas of (1) renewable energy such as solar, wind, interisland cable, bioenergy, transportation/electric vehicles, wave energy, etc., (2) energy efficiency such as Rebuild Hawaii, building codes, tax credits, homeowner tips, etc., and (3) energy policy and planning.
- Assist in the placement of website articles in local and national energy-related e-newsletters, e-magazines, and other related web media outlets, etc.
- Post energy-related articles (local, national and/or international coverage) on HCEI's website.
- Provide content management, supporting photographs, graphics, video/b-roll footage, etc. to increase HCEI's website usage for consumers, businesses, government, military, and education sectors
- Update data and statistical content, including but not limited to, ARRA-related articles, news releases, photos, graphics, etc. for DBEDT's State Energy Office's ARRA website at (www.gov/recovery/energy).
- Write and update content, graphics and/or photographs for the Asia-Pacific Clean Energy Summit website at (www.asiapacificcleanenergy.com). Contractor should have technical expertise and skills (i.e., operating systems, Content Management Systems, web development apps - Adobe Dreamweaver, web apps - Java, browsers - Internet Explorer, Mozilla, Firefox).

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5. Approach on how Offeror will conduct HCEI community assessment, data collection, “talk story sessions”, telephone and door to door evaluation surveys to help focus communication messaging for targeted audiences especially on the islands of Maui, Molokai, Lanai, Kauai, and the Big Island. This includes the implementation of community grass-roots outreach campaigns for each island and coordination of community meetings. – 10 points
6. Approach on developing and implementing a comprehensive HCEI calendar of events, activities, news conferences, etc. that generates increased awareness of HCEI’s key milestones and accomplishments – 7 points
7. Approach on creating, developing and producing HCEI collateral materials and power point presentations for targeted audiences – 8 points
8. Taking part in public meetings on Oahu, Molokai, Lanai, and Maui for the interisland cable environmental impact statement (EIS) to include preparing briefing materials, story boards, and information packets – 5 points

5.05-5. Value-Added Innovation (30 points)

Proposals will be evaluated against the following criteria:

1. Existing Contractor personnel/staff on neighbor islands – 5 points
2. Existing media partnerships (local and/or national) that can further HCEI’s outreach and publicity efforts – 10 points
3. Existing working relationships with cultural, environmental, and/or agricultural groups who can further HCEI’s outreach, publicity, and public information efforts – 15 points

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SECTION FIVE

SPECIAL PROVISIONS

5.01 CONTRACT ADMINISTRATOR

For the purposes of this solicitation, the official contact person for this solicitation is Susan Gray-Ellis (808) 587-9002. The DBEDT-SID Project Manager will be announced at a later date.

5.02 SCOPE

All services to be provided to DBEDT shall be in accordance with this RFP, including the special provisions in this section, the Scope of Work specified herein, and the General Conditions (GC), included as an attachment and available at the DBEDT/SID/Contracts Office, State of Hawaii, 235 S. Beretania St., 5th Floor, Room 503, Honolulu, Hawaii 96813.

5.03 RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310(c), HRS.:

- (1) Chapter 237, tax clearance;
- (2) Chapter 383, unemployment insurance;
- (3) Chapter 386, workers' compensation;
- (4) Chapter 392, temporary disability insurance;
- (5) Chapter 393, prepaid health care;
- (6) Chapter 103D-310 (c), Certificate of Good Standing (COGS) for entities doing business in the State
- (7) One of the following:
 - a. Be registered and incorporated or organized under the laws of the State, hereinafter referred to as a "Hawaii business"; or
 - b. Be registered to do business in the State, hereinafter referred to as a "compliant non-Hawaii business."
- (8) General Liability and Automobile Insurance (per Comptroller's memos)

Liability Insurance

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

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As an alternative to the Contractor providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Contractor may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
General Liability	No less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate
Automobile Insurance	No less than \$1,000,000 per accident

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, State Procurement Office, P. O. Box 119, Honolulu, Hawaii 96810-0119."
2. "The State of Hawaii is added as an additional insured with respect to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon Contractor's execution of the contract, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as a material default under this contract, entitling the State to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required insurance shall be construed neither to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, Contractor shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

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Refer to Section 5.26, Award of Contract, for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

5.04 OFFEROR QUALIFICATIONS

Offeror shall meet all of the qualifications required by this RFP. Failure to meet the qualifications as specified in Section 3.04, Experience and Capabilities, will likely have an adverse affect on Offeror's proposal evaluation.

5.05 PROPOSALS MUST BE PRICED.

5.06 BONDS: Bid, performance, and payment bonds are not required for this solicitation.

5.07 TERM OF CONTRACT

Successful Offeror shall be required to enter into a formal written contract to commence work on this project.

The contract shall be for a period beginning on the date of execution of the contract and ending April 30, 2012. In the event that the ARRA funds may be extended, the State may extend the term of the contract for an additional period of up to five (5) years or portions thereof without the necessity of re-bidding, upon mutual agreement in writing at least sixty (60) days prior to the expiration of the contract. The contract price or commission paid to the Contractor for the extended period shall remain the same or be renegotiated. Due to Federal Grant requirements, it is possible that no extension may be granted. In the event the Federal Grant requirements change, additional funds may be added and the contract term may be extended.

When interests of the State so require, the State may terminate the contract for convenience by providing six (6) weeks prior written notice to the contracted parties.

5.08 OVERVIEW OF THE RFP PROCESS

- (1) The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS Section 103D-303. All Offerors are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal of any Offeror shall constitute admission of such knowledge on the part of such Offeror.
- (2) The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
- (3) Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.
- (4) All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

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- (5) The Procurement Officer, or an evaluation committee of at least three (3) State employees selected by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section Four. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.
- (6) Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the Best and Final Offer (BAFO) is tendered.
- (7) If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.
- (8) Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the top three (3) Priority Listed Offerors prior to the submission of the BAFO.
- (9) If there are any changes in key personnel and/or staffing after the discussions and prior to submitting the BAFO, the Offeror must notify the STATE immediately. The State may choose to reevaluate the Offeror's proposal which may result in its removal from the Priority Listed Offerors.
- (10) The date and time for Offerors to submit their BAFO, if any, are indicated in Section 1.04, RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediately previous offer shall be construed as its BAFO.
- (11) After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer shall award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in Section Four.
- (12) If, after the posting of the notice of award but prior to the execution of the contract, the Offeror makes any changes to the key personnel assigned to the project, the State reserves the right to withdraw the award and may select another Offeror in accordance with State procurement policy.
- (13) The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once the award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.

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- (14) The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
- (15) The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

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5.09 CONFIDENTIAL INFORMATION

If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer named on the cover of this RFP should be so advised in writing and provided with justification to support the confidentiality claim. Price is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Pursuant to HAR Section 3-122-58, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination on confidentiality in accordance with HRS Chapter 92F. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS Section 92F-42(12).

5.10 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter **must be made in writing and should be received by the Department of Business, Economic Development, and Tourism prior to the deadline for written questions as stated in Section 1.02, RFP Schedule and Significant Dates.** This will allow issuance of any necessary corrections and/or amendments to the RFP. It will help prevent the opening of a defective solicitation and exposure of Offeror's proposal upon which award could not be made. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein, must be listed in the *Exceptions* section of the Offeror's proposal, if the exception is unresolved by the Proposal Due date.

5.11 QUESTIONS PRIOR TO OPENING OF PROPOSALS

All questions must be submitted in writing (email is acceptable) to the DBEDT/SID/Contracts Office, 235 S. Beretania St., 5th Floor, Room 503, Honolulu, Hawaii 96813. Attn: Ms. Susan Gray-Ellis telephone (808) [587-9002], facsimile (808) [586-2536]. Email: sgray-ellis@dbedt.hawaii.gov. The State will respond to written questions by the date indicated in Section 1.02, RFP Schedule and Significant Dates, or as amended.

5.12 CANCELLATION OF RFP AND PROPOSAL REJECTION

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR Section 3-122-96 through 3-122-97.

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The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

5.13 OFFER ACCEPTANCE PERIOD

The State's acceptance of offer, if any, will be made within ninety (90) calendar days after the opening of proposals. Prices or commissions quotes by the Offeror shall remain firm for a ninety (90) day period.

5.14 PROPOSAL AS PART OF THE CONTRACT

This RFP and all or part of the successful proposal may be incorporated into the contract.

5.15 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS

During the course of this contract, the Contractor may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the Contract Administrator will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (contract modification) signed by the Department of Business, Economic Development, and Tourism and Contractor personnel authorized to sign contracts on behalf of the Contractor.

The Contractor will not commence additional work until a signed contract modification has been issued.

5.16 DEBRIEFING

Pursuant to Section 3-122-60, HAR, a debriefing is provided, if requested, to the non-selected Offerors to inform them of the basis for the source selection decision and contract award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of the written request.

A protest by the requestor submitted pursuant to Section 103D-701 HRS following a debriefing shall be filed within five (5) working days, as specified in Section 103D-303 (h) HRS.

5.17 PROTEST

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the

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date set for receipt of offers. It is further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract or debriefing.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to Section 103D-701 HRS, and Section 3-126-3 HAR, shall be submitted in writing to the DBEDT/SID/Contracts Office, 235 S. Beretania St., 5th Floor, Room 503, Honolulu, Hawaii 96813. Attn: Ms. Susan Gray-Ellis, telephone (808) [587-9002], facsimile (808) [586-2526], email: sgray-ellis@dbedt.hawaii.gov.

5.18 DOWNLOADED SOLICITATION

Offeror is advised that if interested in responding to this solicitation, Offeror may choose to submit its offer on a downloaded document from the Internet **provided** Offeror registers its company by fax or e-mail for this specific solicitation. If Offeror does not register its company, Offeror will not receive addenda, if any.

5.19 GOVERNING LAW: COST OF LITIGATION

The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, shall be governed by the laws of the State of Hawaii. Any action at law or equity to enforce or interpret the provisions of this contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Contractor in connection with this contract, the Contractor shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

5.20 SUBMISSION OF PROPOSAL

The submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a proposal, each Offeror must:

- (1) Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documents; and
- (2) Become familiar with State, local, and federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

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5.21 ECONOMY OF PRESENTATION

Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity of content. If any additional information is required by the State regarding any aspects of the Offeror's proposal, it shall be provided within four (4) business days.

5.22 DISCUSSION WITH PRIORITY LISTED OFFERORS

Priority listed offerors shall have a discussion with the evaluation committee to discuss their proposal to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions, normally within the timeframe indicated in Section 1.02.

5.23 CONTRACT EXECUTION

The successful Offeror receiving the award shall enter into a formal written Contract for Goods & Services Based on Request for Competitive Sealed Proposals. No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the commencement date. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract for the additional extension period. The Contractor or the State may terminate the extended contract at any time without cause upon six (6) weeks prior written notice.

5.24 CHANGE IN KEY PERSONNEL

After execution of the Contract, any and all substitutions of key personnel must be pre-approved by the STATE.

5.25 INVOICING AND PAYMENT

Incremental payments shall be made to the awarded Contractor in accordance with a deliverable schedule and on a task completed basis, upon receipt of reports that meet the expectations of the RFP. The receipt of quarterly narrative reports shall be due based on the timeline submitted by the Contractor in the proposal, or as amended.

Section 103-10 HRS provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any offer submitted with a condition requiring payment within a shorter period. Further, the State will reject any offer submitted with a condition requiring interest payments greater than that allowed by Section 103-10 HRS, as amended.

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The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

5.26 AWARD OF CONTRACT

Method of Award. The award will be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria. The successful Offeror shall be awarded a "Contract for Goods or Services Based upon Request for Competitive Sealed Proposal."

Responsibility of Successful Offeror. With reference Section 103D-310(c) HRS, if compliance documents and insurance certificates have not been submitted to the Department of Business, Economic Development, and Tourism prior to award, the successful Offeror shall furnish documents to the procurement officer to demonstrate compliance with this section, as follows:

HRS Chapter 237 tax clearance requirement for award. Instructions are as follows:

Pursuant to Section 103D-328 HRS, lowest responsive Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the Department of Business, Economic Development, and Tourism.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2009) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): <http://hawaii.gov/tax/>

DOTAX Forms by Fax/Mail: (808) 587-4242
1-800-222-3229

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX:	(808) 587-1488
IRS:	(808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to the Department of Business, Economic Development, and Tourism. However, the tax clearance certificate shall be submitted to the Department of Business, Economic Development, and Tourism.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.

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Instructions are as follows:

Pursuant to Section 103D-310(c) HRS, the lowest responsive Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the Department of Business, Economic Development and Tourism. A photocopy of the certificate is acceptable to the Department of Business, Economic Development and Tourism.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112*, Form LIR#27 which is available at <http://hawaii.gov/labor/formsall.shtml> or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the Department of Business, Economic Development, and Tourism.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the Department of Business, Economic Development, and Tourism. However, the certificate shall be submitted to the Department of Business, Economic Development, and Tourism.

Compliance with Section 103D-310(c) HRS, for an entity doing business in the State. The lowest responsive Offeror shall be required to submit a *CERTIFICATE OF GOOD STANDING* (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the Department of Business, Economic Development, and Tourism. A photocopy of the certificate is acceptable to the Department of Business, Economic Development, and Tourism.

To obtain the Certificate, the Offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.

On-line business registration and the Certificate are available at www.BusinessRegistrations.com. To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

Final Payment Requirements.

In addition to the above certificates, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" menu.

Obtaining Certification through Hawaii Compliance Express is Recommended.

Instead of separately applying for these paper certificates at the various state agencies, vendors may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE

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provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of Section 103D-310(c) HRS, shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$15.00 to the Hawaii Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the prior sections.

Timely Submission of all Certificates. The above certificates should be applied for and submitted to the Department of Business, Economic Development, and Tourism as soon as possible. If a valid certificate, including insurance certificates, is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

5.27 SUBCONTRACTING

No work or services shall be subcontracted or assigned without the prior written approval of the State. No subcontract shall under any circumstances relieve the Contractor of his/her obligations and liability under this contract with the State. All persons engaged in performing the work covered by the contract shall be considered employees of the Contractor. See General Condition no. 6 for additional information.

5.28 CONTRACT INVALIDATION

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

5.29 NON-CONFORMANCE AND RE-EXECUTION OF WORK

If any work is not in full compliance with this RFP, the Contractor shall make all necessary corrections to the full satisfaction of the State and at no additional cost to the State. The Contractor shall perform corrective work within the period allowed by the State.

5.30 ADDITIONS, AMENDMENTS AND CLARIFICATIONS

State General Conditions (GC). dated April 15, 2009, are contained in Attachment 5.

Approvals. Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

Cancellation of Solicitations and Rejection of Offers. The solicitation may be cancelled or the offers may be rejected, in whole or in part, when in the best interest of the purchasing agency, as provided in HAR Sections 3-122-95 through 3-122-97.

Confidentiality of Material. All material given to or made available to the Contractor by virtue of this contract, which is identified as proprietary or confidential information, will be

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safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

All information, data, or other material provided by the Offeror or the Contractor to the State shall be subject to the Uniform Information Practices Act, HRS chapter 92F. The Offeror shall designate in writing to the Procurement Officer those portions of its unpriced offer or any subsequent submittal that are trade secrets or other proprietary data that the Offeror desires to remain confidential, subject to HAR Section 3-122-58, in the case of an RFP, or HAR Section 3-122-30, in the case of an IFB. The Offeror shall state in its written communication to the Procurement Officer, the reason(s) for designating the material as confidential, for example, trade secrets. The Offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer.

Price is not confidential and will not be withheld. In addition, in the case of an IFB, makes and models, catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Department of the Attorney General in accordance with HRS Chapter 92F. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror protests under HAR Section 3-126. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with Section 92F-15.5 HRS.

Federal Wage Rate Requirements. See Attachment 6 for Wage Rate Requirements under Section 1606 of the Recovery Act which apply to this solicitation.

Preparation of Offer. An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an Offeror may submit only one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected. This paragraph rescinds and replaces Subsection 2.5 Preparation of Offer.

Preference for Hawaii Products. A purchasing agency shall review all specifications in a bid or proposal for purchase from the Hawaii products (HP) list where these products are available, provided that the products: meet the minimum specifications and the selling price f.o.b. jobsite; unloaded, including applicable general excise tax and use tax, do not exceed the lowest delivered price in Hawaii f.o.b. jobsite; and unloaded, including applicable general excise tax and use tax, do not exceed the lowest delivered price of a similar non-HP by more than: three per cent where class I HP are involved; five per cent where class II HP are involved; or ten per cent where class III HP are involved.

All persons submitting bids or proposals to claim HP preference shall designate in their bids which individual product and its price is to be supplied as a HP. Where a bid or

proposal contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a HP item shall be decreased by subtracting therefrom: three per cent, five per cent, or ten per cent for the class I, class II, or class III HP items bid or offered, respectively. The lowest total bid or proposal, taking the preference into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.

Printing Preference: All bids or proposals submitted for a printing, binding, or stationery contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other production-related work, shall receive a fifteen per cent preference for purposes of bid or proposal evaluation.

Where bids or proposals are for work performed in-state and out-of-state, then for the purpose of selecting the lowest bid or evaluating proposals submitted, the amount bid or proposed for work performed out-of-state shall be increased by fifteen per cent. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.

5.36 SPECIAL CONDITIONS

All work performed and products developed pursuant to the Contract shall comply with all applicable State, county and federal rules, codes, and guidelines, including ARRA-SEP Revised Terms and Conditions and reporting requirements attached hereto as Exhibit B and Exhibit C.

The Contractor must assure and be responsible for the continuity of service activities in the event of staff illness, medical emergencies, vacancies, or other situations that result in program resources that are less than proposed and contracted for. The Contractor must not require or depend on the State's staff to provide services activities in the event that program resources are not available due to the above situations.

When a disagreement arises between the Contractor and the State in regards to the performance of specific service requirements within contract specifications, the wishes of the State shall prevail. Failure on the part of the Contractor to comply shall be deemed cause for corrective action and subject to contractual remedies.

DBEDT reserves the right to reduce, amend, or expand the scope of work.

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SECTION SIX

ATTACHMENTS AND EXHIBITS

- Attachment 1: PROPOSAL TRANSMITTAL LETTER, QUALIFICATIONS QUESTIONNAIRE, CONTRACTOR REFERENCES, SUBCONTRACTOR REFERENCES, CORPORATE RESOLUTION
- Attachment 2: OFFER FORM, OF-1
- Attachment 3: OFFER FORM, OF-2
- Attachment 4: CERTIFICATE OF COMPLIANCE FOR FINAL PAYMENT
- Attachment 5: GENERAL CONDITIONS (APRIL 15, 2009)
- Attachment 6: SUBGRANT FLOW DOWN PROVISIONS FOR WAP AND SEP FINANCIAL ASSISTANCE AWARDS (11-20-09)

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Attachment 1

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM
Strategic Industries Division

Public Relations Services for the Hawaii Clean Energy Initiative

SOLICITATION No. RFP-10-005-SID

PROPOSAL

OFFERORS ARE TO COMPLETE AND SUBMIT THIS SECTION FOR THEIR PROPOSALS.

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To be submitted on Offeror's official business letterhead

PROPOSAL

TRANSMITTAL LETTER

Public Relations Services for the Hawaii Clean Energy Initiative

SOLICITATION No. RFP-10-005-SID

Department of Business, Economic Development, and Tourism
DBEDT/SID/Contracts Office
235 S. Beretania St., 5th Floor, Room 503
Honolulu, Hawaii 96813

The undersigned has carefully read and understands the terms, conditions and requirements specified in the Request for Proposal attached hereto and hereby submits the following proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees to the following:

- That by submitting this proposal, the undersigned is declaring that this proposal is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts;
- That by submitting this proposal, the undersigned is declaring that the proposal is being made without collusion with any other person, firm or corporation;
- That the Director of the Department of Business, Economic Development, and Tourism reserves the right to cancel the Request for Proposal at any time and all proposals may be rejected in whole or in part when it is in the best interest of the State;
- That discussions may be conducted with **Offerors** who submit proposals determined to be reasonably acceptable of being selected for award, but a proposal may be accepted without such discussions;
- That the undersigned may be required to submit best and final offers based on discussion;
- That award, if any, will be made on a firm fixed fee basis to the responsive and responsible offeror who has submitted the most advantageous offer in accordance with the evaluation criteria set forth in this Request for Proposal;
- That by submitting this proposal, the undersigned is declaring that if awarded a contract, the undersigned will comply with all requirements for wages, hours and working conditions in accordance with Section 103-55, Hawaii Revised Statutes and federal terms and conditions;
- That if awarded a contract, the undersigned will assume and accept the flow down of all federal reporting and other requirements, including future federal requirements, provided that the Department of Business, Economic Development, and Tourism provides notices of these changes to the undersigned in writing; and
- That if awarded a contract, the undersigned hereby commits to a minimum of two consultation sessions with the State.

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The undersigned acknowledges receipt of any addendum issued by the Department of Business, Economic Development, and Tourism by recording in the space below the date of receipt:

Addendum No. 1 _____ Addendum No. 2 _____ Addendum No. 3 _____

Addendum No. 4 _____ Addendum No. 5 _____ Addendum No. 6 _____

The undersigned hereby certifies that the proposal hereby attached has been carefully checked and is submitted as correct.

Respectfully submitted,

Exact Legal Name of Offeror (company name)

Authorized signature (attach corporate resolution or evidence of authorization to bind)

Title

Date

Street Address

City, STATE, Zip Code

Telephone No.

Mailing Address (if different from street address)

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State of Hawaii General Excise Tax (GET) License Number: _____

Federal Taxpayer Identification Number: _____

Type of Organization:

_____ Individual _____ Partnership _____ Corporation _____ Joint Venture

Jurisdiction where Offeror is organized: Hawaii _____ Other: _____

If offeror is a "dba" or a division of a corporation, furnish the exact legal name of the corporation under which the contract, if awarded, will be executed:

PREFERENCES: (if applicable)

The following preferences apply to this solicitation. A detailed discussion of each preference is included in the section entitled, "Special Provisions." Indicate which preferences apply.

1. In-state contractor preference: yes _____ no _____

If yes, indicate State of Hawaii business street address: _____

If yes, attach current (issued within 45 days of bid submittal) tax clearance from the State of Hawaii Department of Taxation.

(Note: The bidder may wish to also obtain tax clearance from the Internal Revenue Service at the same time in order to fulfill this requirement if awarded a contract)

2. Tax Adjustments:

Are you an out-of-state business?	Yes _____	no _____
Is your organization tax exempt?	Yes _____	no _____

3. Reciprocal Preferences:

List your principal place of Business:

Street Address, City, State, Zip Code

Are you registered with the State of Hawaii, Department of Commerce and Consumer Affairs to do business in the State of Hawaii? Yes _____ no _____

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QUALIFICATIONS QUESTIONNAIRE

1. How many years has your organization been in business under your present business name? _____
2. How many years experience in this field of work has your organization had? _____
3. Show the five most recent projects your organization has completed in the past five (5) years that are related to this project:

Name and Address of Project Owner	Description	Contract	Completion Date	Amount
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

4. Have you ever failed to complete any work awarded to you? _____
If so, please provide a brief description, including when and where it took place and why work was not completed.

5. Has any officer or partner of your organization in the past five (5) years been an officer, partner or individual of some other organization that failed to complete a contract? _____
If so, state name of individual, other organization and reason therefore:

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6. For what entities within the State of Hawaii other than government agencies have you performed work and to whom do you refer?

Agency	Project Description	Contact Person	Phone

7. For what State departments and county agencies of the State of Hawaii have you performed work and to whom do you refer?

Department	Project Description	Contact Person	Phone

8. Have you performed work for the U.S. Government? _____
If so, list and to whom do you refer?

Agency	Project Description	Contact Person	Phone

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9. Have you ever performed any work for any other governmental agencies outside the State of Hawaii? -----
If so, list and to whom do you refer?

Agency	Project Description	Contact Person	Phone

10. List a minimum of three references for work performed similar to this project.

Company	Project Description	Contact Person	Phone

11. What is the professional or project experience of the principal individuals being assigned to this project?

Individual's Name	Position or Title	Years Experience	Type of Work

Public Relations Services for the Hawaii Clean Energy Initiative



CONTRACTOR REFERENCES

To be completed by Offeror.

OFFEROR INFORMATION

1. Name of Offeror	2. RFP Reference Number
--------------------	-------------------------

CLIENT #1 INFORMATION

3. Organization Name	4. Organization Address
5. Project Name	6. Project Dates Start: End:
7. Contact Name/Title Phone	
8. Scope of Services	

CLIENT #2 INFORMATION

3. Organization Name	4. Organization Address
5. Project Name	6. Project Dates Start: End:
7. Contact Name/Title Phone	
8. Scope of Services	

CLIENT #3 INFORMATION

3. Organization Name	4. Organization Address
5. Project Name	6. Project Dates Start: End:
7. Contact Name/Title Phone	
8. Scope of Services	

Public Relations Services for the Hawaii Clean Energy Initiative

11. Additional Comments

Public Relations Services for the Hawaii Clean Energy Initiative



SUBCONTRACTOR REFERENCES

To be completed by Offeror.

OFFEROR INFORMATION

1. Name of Offeror

2. RFP Reference Number

SUBCONTRACTOR #1 INFORMATION

3. Organization Name

4. Organization Address

5. Project Name

6. Project Dates

Start:

End:

7. Contact

. Name/Title

Phone

8. Scope of Services to be Rendered:

SUBCONTRACTOR #2 INFORMATION

3. Organization Name

4. Organization Address

5. Project Name

6. Project Dates

Start:

End:

7. Contact

. Name/Title

Phone

8. Scope of Services to be Rendered.

SUBCONTRACTOR #3 INFORMATION

3. Organization Name

4. Organization Address

5. Project Name

6. Project Dates

Start:

End:

7. Contact

. Name/Title

Phone

8. Scope of Services to be Rendered.

Public Relations Services for the Hawaii Clean Energy Initiative

11. Additional Comments

Public Relations Services for the Hawaii Clean Energy Initiative

CORPORATE RESOLUTION

Attach here:

1. Corporate resolution or written authorization of Offeror's representative to sign this proposal here.

Public Relations Services for the Hawaii Clean Energy Initiative

Attachment 2

OFFER FORM

OF-1

Public Relations Services for the Hawaii Clean Energy Initiative

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

RFP-10-005-SID

Department of Business, Economic Development, and Tourism
DBEDT/SID/CONTRACTS OFFICE
235 S. Beretania St., 5th Floor, Room 503
Honolulu, Hawaii 96813

Dear Ms. Susan Gray-Ellis:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ *Corporation ☐ Joint Venture
☐ Other _____

*State of incorporation: _____

Hawaii General Excise Tax License I.D. No. _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date: _____

(x) _____

Authorized (Original) Signature

Telephone No _____

Name and Title (Please Type or Print)

E-mail Address _____

**

Exact Legal Name of Company (Offeror)

****If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:**

Public Relations Services for the Hawaii Clean Energy Initiative

Attachment 3

OFFER FORM OF-2

Public Relations Services for the Hawaii Clean Energy Initiative

Total contract cost for accomplishing the development and delivery of the services.

(Not to exceed \$500,000)

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services in accordance with Section 3.06 Pricing.

Offeror

Name of Company

Public Relations Services for the Hawaii Clean Energy Initiative

Attachment 4

CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT (Reference §3-122-112, HAR)

Reference: _____
(Contract Number) (IFB/RFP Number)

_____ affirms it is in
(Company Name)
compliance with all laws, as applicable, governing doing business in the State of Hawaii to include the following:

12. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
13. Chapter 386, HRS, Worker's Compensation Law;
14. Chapter 392, HRS, Temporary Disability Insurance;
15. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, Business Registration Division.

Moreover, _____
(Company Name)

acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

Signature: _____

Print Name: _____

Title: _____

Date: _____

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely

Public Relations Services for the Hawaii Clean Energy Initiative

responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
 - g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be

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effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
 - c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar

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goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
 - (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
 - b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to

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resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its

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terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

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- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);

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- (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
 - (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
 - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

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- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
 - b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
 - c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.
- 16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:
 - a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
 - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
 - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.
- 17. Payment Procedures; Final Payment; Tax Clearance.
 - a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
 - b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
 - c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

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- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.
- 18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.
- 19. Modifications of Contract.
 - a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
 - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
 - c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of

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the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.

- h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
- 20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
 - (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
 - a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
 - b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
 - c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
 - d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

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21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
- (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.

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- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

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28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including,

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- without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or

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county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

42. Confidentiality of Personal Information.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

- (1) Social security number;
- (2) Driver's license number or Hawaii identification card number; or
- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

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c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

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Attachment 6

SUBGRANT FLOW DOWN PROVISIONS FOR WAP AND SEP FINANCIAL ASSISTANCE AWARDS

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

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 (For WAP ARRA Financial Assistance Awards)

Davis Bacon Act and Contract Work Hours and Safety Standards Act (For Use in SEP Financial Assistance Awards)

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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 **TABLE OF CONTENTS**

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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.

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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

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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

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[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.

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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

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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

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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

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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.

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(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:

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[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.

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(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
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(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,

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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.

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(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

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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

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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 Weatherization Assistance Program (WAP) Awards when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT ("RECOVERY ACT") term is required.

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:

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(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

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(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.

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(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.

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(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,

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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 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

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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

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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.

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(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

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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/sf1413e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413e.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

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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

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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.

Prescription: Include for ARRA Awards (other than Weatherization Assistance Program and Loan Program awards) when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT ("RECOVERY ACT") term is required.

DAVIS BACON ACT & CONTRACT WORK HOURS & SAFETY STANDARDS ACT

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

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

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

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

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

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

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

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

(a) Davis Bacon Act

(1) Minimum wages.

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

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

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance

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with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon

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the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

(3) Payrolls and basic records.

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

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the

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

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

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

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

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

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

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

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

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the

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apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the

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subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such

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territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

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

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

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).

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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.