

INNOVATE WASHINGTON FOUNDATION

665 N. Riverpoint Boulevard
Spokane, WA 99202-1665

5/16/2014

Request for Proposals

Dear Recipient,

Please find attached a Request for Proposals (RFP) for assistance with the Smart Buildings Center's (SBC) pilot project – Virtual Baselines and Audit Technologies (Agreement #1866). Proposals must be submitted electronically to the RFP Contracts administrator listed below no later than June 2nd, 2014 at 4PM local time in Seattle, WA.

Oral presentations will be required of the top-scoring firm(s) and will be held at SBC offices located at 240 2nd Ave S, Seattle, WA 98104. Interviews times will be scheduled with top-scoring firm(s) and are expected to be held on June 9th-June 12th, so please reserve those dates.

You can find a copy of this RFP on SBC's website here: <http://www.smartbuildingscenter.org/these-rfps-released>
Questions and answers about this RFP will be publically addressed and posted in Q&A Addendums to the SBC website at this link: <http://www.smartbuildingscenter.org/baseline-virtual-questions/>

We look forward to your response.

Contact information for the Contracts Administrator

Innovate Washington Foundation
Attn: Contracts & Legal
1001 Fourth Avenue, Safeco Plaza, Suite 3200
Seattle, WA 98154

Should you have any questions regarding the agreement please do not hesitate to contact me at (206) 221-5208, or via e-mail at legal@innovatewashington.org.

Sincerely,
Maria Manzano
Contracts Administration
Enc.

INNOVATE WASHINGTON FOUNDATION

665 N. Riverpoint Boulevard
Spokane, WA 99202-1665

REQUEST FOR PROPOSALS #RFP 1866

PROJECT TITLE: Virtual Baselines and Audit Technologies

PROPOSAL DUE DATE

Monday the 2nd of June, 2014 at 4:00PM local time in Seattle, WA.

EXPECTED TIME PERIOD FOR CONTRACT

From 6/2014 to 10/2014.

CONSULTANT ELIGIBILITY:

This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

CONTENTS OF THE REQUEST FOR PROPOSALS:

1. Introduction
2. General Information for Consultants
3. Proposal Contents
4. Evaluations and Award
5. Exhibits
 - A. Purpose, Background & Technical Considerations
 - B. Certifications and Assurances
 - C. Personal Service Contract with General Terms and Conditions
 - D. US Economic Development Administration Standard Terms and Conditions

1. INTRODUCTION

1.1 PURPOSES AND BACKGROUND

Innovate Washington Foundation, hereafter called "BUYER," is initiating this Request for Proposals (RFP) to solicit proposals from firms interested in participating on the above project, Virtual Baselines and Audit Technologies.

This project is more fully described in Exhibit A, Purpose, Background and Technical Considerations.

1.2. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about 6/2014 and to end on 10/2014. Amendments extending the period of performance, if any, shall be at the sole discretion of the BUYER.

1.3. MINIMUM QUALIFICATIONS

The Consultant must be licensed to do business in the state of Washington. The Consultant must have 3 years' experience in Building Energy Efficiency Consulting.

1.4 DEFINITIONS

Definitions for the purposes of this RFP include:

Buyer-Innovate Washington Foundation (IWF).

Consultant- Individual or company submitting a proposal in order to attain a contract with the BUYER.

Contractor- Individual or company whose proposal has been accepted by the BUYER and is awarded a fully executed, written contract.

Proposal – A formal offer submitted in response to this solicitation.

Request for Proposals (RFP) – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

1.5 ADA

The BUYER complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

2. GENERAL INFORMATION FOR CONSULTANTS

2.1 RFP COORDINATOR

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

Innovate Washington Foundation
Attn: Contracts & Legal
1001 Fourth Avenue Plaza, Suite 3200
Seattle, WA 98154
e-Mail: legal@innovatewashington.org

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

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals:	05/19/2014
Question and Answer Period Begins:	05/21/2014
Proposals Due:	06/02/2014
Evaluate Proposals:	06/09/2014
Announce "Apparent Successful Contractor" - Notification Will Be Sent via Fax or e-mail:	06/23/2014
Hold Debriefing Conferences (if requested):	06/23/2014

Note: The BUYER reserves the right to revise the above schedule.

2.3 SUBMISSION OF PROPOSALS

Proposals may be submitted in hard copy or electronically. Proposals may not be transmitted via facsimile. If submitting the proposal in hard copy, the following information is applicable. Consultants are required to submit 3 copies of their proposal including the cover submittal letter and the certifications and assurances form. At least one (1) copy must have original signatures. The proposal, whether mailed or hand delivered, must be received by the BUYER no later than 4:00PM local time in Seattle, Washington, on Monday the 2nd of June, 2014.

The proposal is to be sent to the RFP Coordinator at the address noted in Section 2.1. The envelope should be clearly marked to the attention of the RFP Coordinator, who is the BUYER's sole point of contact for this procurement.

Consultants mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. A consultant hand delivering a proposal should allow time for traffic congestion. Consultants assume the risk for the method of delivery chosen. The BUYER assumes no responsibility for delays caused by any delivery service.

If submitting the proposal electronically, the following information is applicable. Proposals being submitted electronically must be submitted as an attachment to the RFP Coordinator at the address noted in Section 2.1. Proposals must arrive by 4:00 PM local time in Seattle, Washington, on Monday the 2nd of June, 2014. Attachments to e-mail shall be in Adobe PDF format. Consultants submitting proposals via e-mail shall also send copies of the cover submittal letter and the certifications and assurances form with original signatures to the RFP Coordinator. The BUYER does not assume responsibility for any problems with e-mail or electronic communication.

Late proposals will not be accepted and will be automatically disqualified from further consideration. The proposals must respond to the procurement requirements. Do not respond by referring to material presented elsewhere. The proposal must be complete and must stand on its own merits. Failure to respond to any portion of the procurement document may result in rejection of the proposal as non-responsive. All proposals and any accompanying documentation become the property of the BUYER and will not be returned.

2.4 PROPRIETARY INFORMATION

Materials submitted in response to this competitive procurement shall become the property of the BUYER.

Any information in the proposal that the Consultant desires to claim as proprietary information must be clearly designated. The page or pages must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

2.5 REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via e-mail or in hardcopy to all recipients and respondents of the RFP.

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

2.6 MINORITIES & WOMEN-OWNED BUSINESS PARTICIPATION

BUYER encourages participation in all of its contracts by firms certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving a contract and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

2.7 ACCEPTANCE PERIOD

Proposals must provide 30 to 60 days for acceptance by BUYER from the due date for receipt of proposals.

2.8 RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The BUYER also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

2.9 MOST FAVORABLE TERMS

The BUYER reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms that the Consultant can propose. There will be no best and final offer procedure. The BUYER does reserve the right to contact a Consultant for clarification of its proposal during the evaluation process. In addition, if the Consultant is selected as the apparent successful contractor, the BUYER reserves the right to enter into contract negotiations with the apparent successful contractor, which may include discussion regarding the terms of the proposal. Contract negotiations may result in incorporation of some, or all, of the Consultant's proposal. The Consultant should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. It is also understood that the proposal will become part of the official procurement file.

2.10 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful contractor will be expected to enter into a contract that is substantially the same as the sample contract and its general terms and conditions attached as Exhibit C. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances section, Exhibit B to this solicitation. The BUYER will review requested exceptions and accept or reject the same at its sole discretion.

2.11 COSTS TO PROPOSE

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

2.12 NO OBLIGATION TO CONTRACT

This RFP does not obligate the BUYER to contract for services specified herein.

2.13 REJECTION OF PROPOSALS

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

2.14 COMMITMENT OF FUNDS

No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.15 INSURANCE COVERAGE

The Contractor is to furnish the BUYER with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below. The Contractor shall, at its own expense, obtain and keep in force insurance coverage that shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the BUYER within fifteen (15) days of the contract effective date.

Liability Insurance

1) Commercial General Liability Insurance: Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2) Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Employers Liability ("Stop Gap") Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. Additional Insured. The Innovate Washington Foundation, its agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the IWF.

2. Cancellation. The Innovate Washington Foundation shall be provided written notice before cancellation or non-renewal of any insurance.

3. Identification. Policy must reference the IWF contract number and the BUYER name.

4. Insurance Carrier Rating. Companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports should issue all insurance and bonds. Any exception shall be reviewed and approved by BUYER before the contract is accepted or work may begin.

5. Excess Coverage. By requiring insurance herein, IWF does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to IWF in any contract.

Worker's Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. IWF will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3. PROPOSAL CONTENTS

The four major sections of the proposal are to be submitted in the order noted below:

1. Signed or Certified Letter of Submittal, including signed Certifications and Assurances (Exhibit B to this RFP).
2. Technical Proposal.
3. Management Proposal.
4. Cost Proposal.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

Items in this section marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit B to this RFP) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with who contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business, as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
5. Location of the facility from which the Consultant would operate.

3.2 TECHNICAL PROPOSAL (SCORED/MANDATORY)

The Technical Proposal must be responsive to information found within Exhibit A. Purpose, Background & Technical Considerations, and contain a comprehensive description of services including the following elements:

A. **Project Approach/Methodology**-Include a complete description of the Consultant's proposed approach and methodology for the project. This section should convey understanding of the project.

B. **Work Plan**-Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of BUYER staff. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.

C. **Project Schedule** -Include a project schedule indicating when the elements of the work will be completed and when deliverables, if any, will be provided.

D. **Deliverables**- Fully describe deliverables to be submitted under the proposed contract.

E. **Outcomes and Performance Measurement**-Describe the impacts/outcomes the consultants propose to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the BUYER.

3.3 MANAGEMENT PROPOSAL

A. Project Management (SCORED/MANDATORY)

1. Project Team Structure/Internal Controls- Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.

2. Staff Qualifications/Experience-Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the BUYER.

B. Experience of the Consultant (SCORED/MANDATORY)

1. Indicate the experience the Consultant and any subcontractors have in the following areas:

- Consultant must be licensed to do business in the state of Washington.
- Consultant must have at least 3 years of experience in building energy efficiency consulting.

2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.

3. Include a list of contracts the Consultant has had during the last five years that relate to the Consultant's ability to perform the services needed under this RFP. List: contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

C. References (MANDATORY)

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three business references for which work has been accomplished and briefly describe the type of service provided. The Consultant and staff proposed to provide the services must grant permission to the BUYER to contact references, and others for whom services have been provided. Do not include current BUYER staff as references. References will be contacted and scored for the top-ranking proposal(s) only.

D. Related Information (MANDATORY)

1. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer or (b) litigated and such litigation determined that the Proposer was in default.

4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. The BUYER will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If the Consultant has experienced no such termination for default in the past five years, so indicate.

E. OMWBE Certification (Optional)

Include proof of certification issued by the Washington State Office of Minority and Women-Owned Business if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

3.4 COST PROPOSAL

The maximum fee for this contract must be \$95,000.00 or less to be considered responsive to this RFP. Non-responsive proposals will not be evaluated.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP.

A. Identification of Costs (SCORED)

Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Consultant is to submit a fully detailed budget including staff costs, administrative costs, travel costs, and any other expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Consultants are required to collect and pay Washington State sales tax, if applicable.

Costs for subcontractors are to be broken out separately. Please note if the Office of Minority and Women's Business Enterprises certify any subcontractors.

4. EVALUATIONS AND CONTRACT AWARD

ALL MANDATORY REQUIREMENTS MUST BE MET IN ORDER TO BE EVALUATED.

4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. Evaluation of proposals will be accomplished by an evaluation team, designated by the BUYER, to determine the ranking of the proposals. BUYER, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

4.2 CLARIFICATION OF PROPOSAL

The RFP Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

4.3 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal-	70 points
Project Approach/Methodology 15 points (maximum)	
Quality of Work Plan 35 points (maximum)	
Project Schedule 10 points (maximum)	
Project Deliverables 10 points (maximum)	
Management Proposal –	60 points
Project Team Structure/Internal Controls 15 points (maximum)	
Staff Qualifications/Experience 15 points (maximum)	
Experience of the Consultant 30 points (maximum)	

Cost Proposal –	70 points
Sub-Total	200 points
Additional Considerations found in Exhibit A - Section 4	60 points
GRAND TOTAL FOR WRITTEN PROPOSAL	260 points

References will be contacted for the top-scoring proposer(s) only.

4.4 ORAL PRESENTATIONS MAY BE REQUIRED

Written submittals and oral presentations, if considered necessary, will be utilized in selecting the winning proposal. The BUYER, at its sole discretion, may elect to select the top scoring finalists from the written evaluation for an oral presentation and final determination of contract award. Should the BUYER elect to hold oral presentations, it will contact the top-scoring firm(s) to schedule a date, time and location. Commitments made by the Consultant at the oral interview, if any, will be considered binding.

4.5 NOTIFICATION TO PROPOSERS

Firms whose proposals have not been selected for further negotiation or award will be notified via FAX or by e-mail.

4.6 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The RFP Coordinator must receive the request for a debriefing conference within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed/e-mailed to the Consultant. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

5. RFP EXHIBITS

A. Purpose, Background & Technical Considerations

B. Certifications and Assurances

C. Personal Service Contract with General Terms and Conditions

D. U.S. Economic Development Administration's Standard Terms and Conditions

RFP- Virtual Baselines and Audit Technologies

1 OVERVIEW

The Smart Buildings Center (SBC) is creating a unique regional demonstration hub where innovative products and services can be deployed and evaluated in operating buildings under real world conditions. This will provide companies with an opportunity to demonstrate innovative technologies with the Smart Buildings Center providing independent, 3rd party data collection and analysis. This should allow companies to obtain reference customer deployments along with independent evaluation of their solutions. To launch this initiative, the Smart Buildings Center is bringing together a dynamic mix of institutions and funding to create the Smart Buildings Center Demonstration & Validation Partnership.

Our first targeted technology area will evaluate whether software-based, virtual baseline, and audit technologies can accelerate projects and/or provide lower costs than traditional building energy efficiency audits and baselines, which are a gateway, and sometimes a hurdle, to identifying and undertaking projects. Current building evaluation techniques including improved benchmarking, fast (Levell) style audits, and utility RCM and conservation programs have made significant progress; however, scalability of these approaches is limited by the availability of skilled personnel, a relatively high level of effort per building, and manual input and maintenance of energy data in systems like ENERGY STAR Portfolio Manager. Today, efforts including mandatory disclosure initiatives and increased deployment of enhanced metering technology are enabling better data availability for comparisons.

Today, companies are offering new classes of products and services including dashboards and analytics tools, virtual auditing software, and energy signature analysis. Providers of these products are making claims to building owners that they can provide better information through scalable data collection and software analysis of energy consumption patterns than traditional methods. If these products are accurate at a lower price point with faster information than traditional processes, they have the potential to remove a key barrier to undertaking energy efficiency projects-the initial time and cost associated with a traditional audit-while improving the overall return on investment for efficiency projects.

A lack of fundamental distinction in an increasingly crowded market including utility programs, dashboards, benchmarking, auditing, and disclosure has led to confusion. For new vendors, this confusion makes it difficult to sell solutions without significant market education. For building owners, managers, and operators, the process to make a strategic and effective decision about the appropriate suite of technologies is cumbersome. The end result is often not taking action or relying on benchmarking tools that don't provide analytical insight without significant expert interpretation. Financing, be it utility incentives or other sources, typically relies on time-consuming sub-system baselines that must be developed and tracked by expert personnel-which adds cost and holds back

EXHIBIT A

investments from building owners. SBC would like to evaluate the performance of a range of innovative virtual audit and baseline products and compare them to current practice.

To increase market confidence, the Smart Buildings Center is launching a project to:

- Define offerings in the market: benchmarks, dashboards, building baselines, virtual audits, etc.
- Collect data to evaluate and validate the performance of specific approaches against buildings with established traditional baselines
- Gather preliminary data to help regional energy efficiency partners understand the potential value of larger-scale investigations
- Publish case studies of projects related to virtual audits and benchmarking
- Highlight innovative Northwest companies

2 PROFESSIONAL SERVICES

The SBC is looking for a vendor that can recruit buildings with pre-established (traditional) baselines and bring them together with new innovative auditing technologies in a demonstration project for evaluation purposes. The vendor will identify, recruit, onboard, and evaluate the technologies against the traditional baseline process to produce case studies highlighting strengths and weaknesses of the technologies. Also, given the increasingly crowded market, the vendor will produce a white paper or product offerings summary that can be utilized by building owners to help them understand the technologies that are available and bring clarity to the types of offerings appropriate for them.

The successful team will be able to deliver the following elements in the framework below; further details are described on the following pages. The bidder understands and shall submit a proposal that will fall within the guidelines of the U.S. Economic Development Administration's Standard Terms and Conditions, a copy of which is attached to this RFP.

Demonstration and Validation

- Identify and recruit a cohort of buildings to participate in the demonstration project
- Identify and recruit solution providers to participate in demonstration and validation of their technologies
- Design and produce data-driven case studies on the individual demonstration projects and the demonstrated set as a whole

Market Definition and Clarity

- Identify, research, and interview, if necessary, solution providers to create a comprehensive map of innovators in the space
- Define offerings in the market related to benchmarks, building baselines, and virtual audits in a manner that reduces confusion for building owners, managers, and operators
- Design and produce a 4-6 page document on the sector geared towards building owners

Project Management

- Effectively manage the project to deliver on schedule and within budget

EXHIBIT A

The SBC will support and assist the successful team in the following areas:

- Provide management, oversight, and technical input into all aspects of the project via SBC staff and partners
- Assist in identifying buildings and technology providers to participate in the demonstration project
- Assist in process for down-selecting which technologies will be demonstrated in the target buildings
- Release, promote, and host an event around the case studies which validate the performance of specific approaches against buildings with established baselines
- Release, promote, and host an event around a sector summary document aimed at educating building owners about the baseline/virtual audit space

Demonstration and Validation

2.1 IDENTIFICATION AND RECRUITMENT OF BUILDINGS

- A critical success factor in this project is delivering commitment agreements from no less than 5 buildings that have already had utility-grade baselines established
 - SBC will provide assistance, but it will be the sole responsibility of the consultant to provide agreements from building owners within 45 days¹ of the start of contract
- Using relationships with building portfolio owners/operators with buildings in the Pacific Northwest, identify candidate portfolios/buildings
 - For baseline technologies
 1. Individual buildings should have a utility-grade baseline no older than 18 months
 2. Buildings with complete whole building baseline (preferred) OR
 3. If complete building baseline is not available, buildings with sets of comparable subsystem baselines.
 4. Building owners must make building data available to solution providers
 - For other solutions within the sector, requisite data should be readily available
- Secure the involvement of the viable sample of buildings for the baseline pilot project including establishing authorization of data releases and case study participation

Deliverables:

- List of candidate buildings, regularly updated showing status of negotiations
- Signed agreements with at least 5 viable sample buildings to participate in pilot within 45 days of contract start

¹ All time references are in Calendar days from signed contract or notice to proceed from Smart Buildings Center

2.2 IDENTIFICATION AND RECRUITMENT OF TECHNOLOGY PROVIDERS

- Research solution providers companies via web, social networks, and printed materials to create a comprehensive list of providers in the baseline/virtual audit sector to create a summary document
- With input from SBC staff, identify criteria for evaluating innovation in sector, product readiness, and engagement readiness for demonstration to narrow number of companies/technologies to 10
- Secure the involvement of at least 5 technologies for the demonstration project including establishing authorization of data releases and case study participation within 45 days of contract start

Deliverables:

Summary document describing the offerings of at least 20 companies in the targeted sector with a recommendation of 10 companies to engage for the demonstration

Secured agreements with at least 5 technology providers to participate in pilot within 45 days of contract start

2.3 CASE STUDIES

- Document results against traditional baseline and graphically output results for case studies
- Develop case studies that compare the technology providers' results to established baseline
- The case studies should be graphically-rich and serve to promote better understanding of virtual audits and their use versus traditional baseline audits
- Anticipated case studies would include:
 - 1 – two-page executive summary that can be read by a building owner/operator to understand the feasibility of using an alternate audit tool to evaluate their building. The study would include how all the innovative products operate as a set against traditional methods
 - 5-one-page executive summaries for each innovative product in the demonstration. The summary should evaluate the results or impact of the product and can be used by the company to support sales of their product

Deliverables:

Case studies as agreed upon with SBC PM to cover all aspects of pilot to be delivered before the end of the contract

2.4 DEMONSTRATION AND VALIDATION SUPPORT

- Provide project staff to support negotiations including
 - Managing contract creation and disbursement between building owner and technology provider
 - Gathering data from building participants and transferring data to technology providers
 - Coordinating directly with technology providers to solicit baseline/audit results for case studies

EXHIBIT A

- The goal of the project is to identify innovative technologies that have substantially lower costs than traditional audits. SBC recognizes that there may be some cost involved in performing the virtual audits that will not be paid by building owners in this project. The bidder's proposal needs to include funds to compensate technology providers using a process approved by SBC staff.

Deliverables:

Timely staff support as directed by SBC PM
Process for management and disbursement of funds to technology providers
Negotiating terms to secure the participation of technology providers
Completed contracts between building owners and technology providers

Market Definition and Clarity

2.5 IDENTIFICATION OF TECHNOLOGY PROVIDERS

- Gather company information via web, marketing materials, and direct interviews
- Develop categorization of companies within sector with input from SBC
- SBC is particularly interested, although not exclusively, in Washington state companies

Deliverables:

Report summarizing and categorizing companies and offerings in the space including a description of product offerings. SBC shall be provided with an electronic record of all contact information for solution providers.

2.6 EXECUTIVE SUMMARY DOCUMENT

- Develop a sector summary document that summarizes building baseline/virtual audit technologies and approaches currently available to building owners
- Conduct research necessary to generate the sector summary document. Research should include literature review, incorporation of findings from technology provider identification and discussions with SBC staff, and other contacts from regional energy efficiency providers
- Anticipated sector summary would include sections that:
 - Describe the traditional audit process
 - Describe the range of offerings that are available-identified from research
 - Articulate to building owners the diversity of solutions and their value and viability in different situations and applications

Deliverables:

A 4-6 page, professionally designed executive summary style paper for electronic distribution for a Building Owner Audience within 90 days of contract start

Project Management

2.7 PROJECT MANAGEMENT AND TRACKING

- Develop and maintain a project workplan that tracks key milestone dates (below)
- Develop and maintain a workplan that assigns appropriate level of staff to meet deliverables
- Develop a budget that tracks with the workplan and milestones

Deliverables:

Complete workplan detailing deliverable schedule and staff assignments

3 SCHEDULE

3.1 SCHEDULE OF CONTRACTED WORK

Signed agreements with at least 5 buildings to participate in pilot	Within 45 days of contract start
Agreements with at least 5 technology providers to participate in pilot	Within 45 days of contract start
Sector summary document developed and finalized for release	Within 90 days of contract start
Contracted Work End:	9/22/2014

4 SCORING CONSIDERATIONS

Having a strong relationship with building owners/operators and the ability to secure the participation of buildings in the project is a critical success factor and will be weighed in the scoring criteria. In addition to the evaluation score sheet listed in section 4.3, three additional criteria will be added to the "Evaluation Weighting and Scoring" section.

- Demonstrated strong relationship with building owners-available points: 20
- Experience achieving signed agreements with building owners for pilot projects-available points: 20
- Demonstrated prior work with executive-style communications-available points: 20

EXHIBIT B

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the BUYER without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. I/we understand that the BUYER will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the BUYER, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
5. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
6. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
7. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
8. I/we grant the BUYER the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.

By: _____

Printed Name

Title

Date: _____

EXHIBIT C

PERSONAL SERVICE CONTRACT WITH GENERAL TERMS AND CONDITIONS

This Agreement is effective on the date of the party last to sign the Agreement ("Effective Date"), by and between the Innovate Washington Foundation (hereinafter "IWF") and XXXXXXXXXX (hereinafter "CONTRACTOR").

I. STATEMENT OF WORK

CONTRACTOR will provide professional services to IWF in the areas described in Appendix B "Statement of Work" (hereinafter "Project").

II. TERM

Subject to its other provisions, the period of performance of this Agreement shall commence on XX/XX/XX or the date of the last party to sign, whichever comes later, and be completed on XX/XX/XX, unless terminated sooner as provided herein.

III. TERMINATION

IWF or CONTRACTOR, by written notice, may terminate this Agreement, in whole or in part if:

- a. IWF or CONTRACTOR determines that a termination is for the convenience of IWF or CONTRACTOR; or
- b. IWF or CONTRACTOR defaults in any performances required under this Agreement and fail to cure the default within 30 days (unless extended by IWF or CONTRACTOR) after receiving a written notice specifying the default. Default includes failure to make progress in the work so as to endanger performance.

Each party shall notify the other by delivering a written Notice of Termination specifying whether termination is for default or for convenience, the extent of termination, and the effective date.

If terminated by IWF upon termination CONTRACTOR shall, if required by IWF:

- a. Place no further subcontracts or orders, except as necessary to complete the scope of the Agreement not terminated.
- b. Cancel all subcontracts to the extent they relate to work terminated and, with prior approval of IWF, settle all related liabilities.
- c. Assign to IWF, if directed by IWF, all right, title and interest of the CONTRACTOR for parts, work in progress, and materials acquired for the work terminated; and all plans, drawings, reports, and other information or property relative to the work terminated which would have been required to be furnished to IWF.

If this Agreement is terminated for convenience, an equitable adjustment shall be made pursuant to the following provisions:

- a. IWF shall pay that portion of the Agreement price corresponding to completed work or services delivered and accepted.
- b. Costs associated with uncompleted work or services performed up to the date of termination will be paid, provided that no payments will exceed the amount that would have been paid had the work or services been completed.
- c. With the prior approval of, or as directed by, IWF, any costs that may continue for a reasonable time to effect an orderly termination will be paid.

If this Agreement is terminated for default, each party and its sureties shall be liable to the other for any damages incurred provided by law, subject to the limitation of liability provided by this Agreement.

If, after termination for default, it is determined that the a party was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience.

IV. SURVIVAL OF OBLIGATIONS

Notwithstanding anything contained herein to the contrary, all covenants and agreements set forth in this Agreement shall survive and continue to bind the Parties after the termination of this Agreement to the extent and for as long as may be necessary to give effect to the rights, duties and obligations of the Parties pursuant to this Agreement. The parties further acknowledge and agree that no material or other breach of any contractual or legal duty by either party shall be held sufficient to excuse or terminate their obligations under this Agreement.

V. FEES

IWF shall pay an amount not to exceed \$XXXXXX.XX for the performance of all things necessary for, or incidental to, the performance of work associated with the Project. This Project is, in whole or in part, funded by Federal funding provided to IWF, Reference Number: XXXXXXXXXX.

VI. RELATIONSHIP OF PARTIES

Nothing in this Agreement shall be construed as giving rise to a relationship between IWF and CONTRACTOR of employer and employee, partners, agency or the creation of a joint venture. Neither Party shall have the authority or power to bind the other or to contract in the name of, or create a liability against, the other in any way or for any purpose, regardless of legal theory or basis. Nothing contained in this Agreement shall be construed as:

- a. Granting or conferring any right to use any information or know how which a party shall elect to furnish hereunder except as expressly authorized in this Agreement; or
- b. Conferring any license or right with respect to any trademark, trade or brand name, the corporate name of either party hereto or the corporate name of a subsidiary of either party hereto or of any other name or mark or any contraction, abbreviation or simulation thereof; or
- c. Granting or conferring any right to assign or delegate this agreement or any rights, duties or obligations herein without the express written consent of the other.

CONTRACTOR is retained by IWF for the sole purpose and to the extent set forth in this Agreement. CONTRACTOR may represent, perform services for, or be employed by such additional clients as CONTRACTOR sees fit, subject to Section VIII below. CONTRACTOR shall have the right to select the means, manner, and method of performing its services under this Agreement. CONTRACTOR may, at CONTRACTOR's own expense and upon prior approval of IWF, use subcontractors to perform the professional services of the Project.

VII. INDEMNIFICATION AND INSURANCE

Each party to this Agreement shall protect, indemnify, and hold harmless the other party from and against any damage, cost, or liability for any and all injuries to persons or property arising from negligent acts or omissions of itself, its employees, officers, agents, and (if applicable) students. Neither party assumes responsibility to the other party for the consequences or any act or omission of any person, firm, or corporation not party to this agreement.

CONTRACTOR, at its own expense, shall obtain and keep in force adequate insurance to satisfy its obligations under this Agreement. Proof of such insurance shall be made to IWF upon request.

VIII. RECORDS AND AUDIT

CONTRACTOR shall maintain accurate records relating to the Statement of Work so as to establish the payments due to CONTRACTOR hereunder, to identify all Sub-contractors and others, and to otherwise verify CONTRACTOR'S compliance with the terms of this Agreement. Such books and records shall be available at their place of keeping for inspection by IWF, or an independent auditor chosen and paid by IWF, for the purposes of determining whether the correct payments have been paid and whether CONTRACTOR has otherwise complied with the terms of this Agreement. If an audit reveals any audit exceptions or management findings then CONTRACTOR

shall be responsible for the correction and removal of any and all exceptions or management findings within 30 days of the audit report.

IX. CONFLICTS OF INTEREST

CONTRACTOR shall maintain the confidentiality of all proprietary IWF information. CONTRACTOR shall not accept any potential client whose interests are in conflict with IWF or the representation of whom would inhibit CONTRACTOR from performing its obligations hereunder. In the event that CONTRACTOR wishes to represent a client which might create a perceived conflict with IWF, CONTRACTOR shall seek written permission to represent the potential client.

X. CONFIDENTIALITY

CONTRACTOR shall maintain the confidentiality of all proprietary IWF information.

Proprietary Information means any information relating directly or indirectly to IWF and its projects not generally known to the public provided to CONTRACTOR by IWF and identified by IWF as Proprietary Information at the time it is provided to CONTRACTOR. Proprietary Information may be conveyed in written, graphic, oral or physical form and may include scientific knowledge, know-how, processes, inventions, techniques, formulae, products, business operations, sponsor requirements, data, plans or other records and information. Proprietary Information made available in written form by IWF to CONTRACTOR will be marked with the legend, "IWF PROPRIETARY INFORMATION", "CONFIDENTIAL", or an equivalent conspicuous legend.

Proprietary Information does not include information which CONTRACTOR can demonstrate:

- (a) Was in CONTRACTOR's knowledge or possession prior to disclosure to CONTRACTOR;
- (b) Was public knowledge or has become public knowledge through no fault of CONTRACTOR; or
- (c) Was properly provided to CONTRACTOR by an independent third party who has no obligation of confidentiality to IWF.

CONTRACTOR agrees to maintain Proprietary Information as confidential and agrees not to disclose Proprietary Information to any third party, nor to use Proprietary Information for CONTRACTOR's own benefit or for the benefit of any other person or entity.

CONTRACTOR may use the Proprietary Information only for the purposes of analyzing and evaluating the potential technical and commercial uses of this information in conjunction with activities governed under this Agreement and associated with the Project. The following further restrictions apply:

- (a) CONTRACTOR may not duplicate or reproduce disclosed Proprietary Information.
- (b) CONTRACTOR may not use, or disclose Proprietary Information for purposes of manufacture or procurement of any invention contained within the Proprietary Information, and
- (c) CONTRACTOR shall not use Proprietary Information for research purposes or to develop products or technologies for commercialization.
- (d) CONTRACTOR agrees to require those employees, dealers, distributors, representatives and agents, and others under its control, which utilize, or are exposed to, the Proprietary Information, to safeguard the Proprietary Information according to the terms of this Section X.

Upon completion of CONTRACTOR's evaluation of Proprietary Information or at IWF's request, CONTRACTOR will discontinue use of and promptly return all Proprietary Information without retaining copies, including samples or specimens embodying Proprietary Information.

CONTRACTOR's obligation to maintain Proprietary Information as confidential shall extend for five (5) years after the termination of this Agreement or until such time as the Proprietary Information has become public knowledge whichever occurs later.

XI. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and supersedes all previous representation, understandings, or agreements, oral or written, between the parties with respect to the subject matter hereof. In the event of a conflict between these Terms and Conditions and the Statement of Work, the terms of the Terms and Conditions shall govern.

XII. ASSIGNMENT; SUCCESSORS AND ASSIGNS

Except as otherwise provided herein, neither party shall have the right to assign, transfer, or delegate, whether involuntarily or by operation of law, any right or obligation under this Agreement, without the prior written consent of the other party. Any purported assignment, transfer, or delegation in violation of this section shall be null and void. Subject to the foregoing limits on assignment and delegation, this Agreement shall be binding and shall inure to the benefit of the parties and their respective successors and assigns.

XIII. NOTICES

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and shall be deemed to have been duly given if delivered by hand, by telecopy (fax), or by mail and addressed to IWF at the following address:

Innovate Washington Foundation
Attn: Contracts & Legal
4311 11th Avenue NE, Suite 220
Seattle, WA 98105

Or to CONTRACTOR at the following address:

XXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX, XX XXXXX

All notices complying with this section shall be deemed to have been received on the date of delivery.

Invoice(s), referencing PO#XXXX, shall be delivered by mail to IWF and be addressed to the following address:

Innovate Washington Foundation
Attn: Accounts Payable
4311 11th Avenue NE, Suite 220
Seattle, WA 98105

XIV. WAIVER

No provision of this Agreement shall be deemed to have been waived by any act of or acquiescence on the part of any party. A waiver may only occur by an instrument in writing signed by an authorized representative of the party waiving the particular provision involved. No waiver of any provision of this Agreement shall constitute waiver of any other provision or of the same provision on any other occasion.

XV. RESOLUTION, GOVERNING LAW, JURISDICTION, AND SEVERABILITY

Except as otherwise provided in this Agreement, when a bona fide claim or dispute arises between the Parties and it cannot be resolved through discussion and negotiation, any Party may request resolution through a Dispute Resolution Board (DRB). A request for a DRB must be in writing, state the disputed issues, state the relative positions of the Parties and be sent to all Parties. Parties must provide a response within 14 days.

Upon a request for a DRB, each Party shall appoint a representative. The representatives shall mutually select a third member. The DRB shall evaluate the facts, Agreement terms and applicable statutes and rules and make a determination by majority vote. The decision of the DRB shall be admissible in any succeeding judicial or quasi-

judicial proceeding concerning the Agreement. The Parties agree that the DRB process shall precede any action in a judicial or quasi-judicial tribunal.

Should a succeeding judicial or quasi-judicial proceeding concerning this Agreement ensue, the rights and obligations of the Parties under this Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. The Parties hereby accept the venue and jurisdiction of the Superior Court of Spokane County.

In the event an action is commenced to enforce a Party's rights under this Agreement, the prevailing Party in such action shall be entitled to recover its reasonable costs and attorney's fees, as determined by a court in conjunction with such legal proceedings. If any of the provisions of this Agreement shall be determined to be illegal or unenforceable by a court of competent jurisdiction, the other provisions shall remain in full force and effect.

XVI. COPYRIGHT PROVISIONS

The parties declare that the IWF shall be the exclusive owner of all Materials produced under this Agreement, and shall be considered "works for hire" as defined by the U.S. Copyright Act. IWF shall be considered the author of such Materials, including but not limited to all copyrights, patents, trade secrets, and any other intellectual property rights.

The parties further declare that CONTRACTOR, and any of its employees, are NOT the authors of the Materials. The parties further declare that CONTRACTOR, and any of its employees, did NOT conceive of any ideas reduced to practice in or related to the Materials. As such, the parties declare that IWF, and/or its employees, are the authors and/or inventors of the Materials produced under this Agreement, and that IWF owns the exclusive right to make, use, sell, offer for sale, reproduce, distribute, display, perform, and/or make derivative works of the Materials.

In addition, to the extent the Materials are not considered "works for hire" under the U.S. Copyright laws or include anything subject to copyright or patent protection, CONTRACTOR hereby irrevocably assigns, transfers and conveys to IWF, and its successors and assigns, all right, title and interest in and to the Materials. CONTRACTOR shall execute and deliver such instruments and take such other actions as may be required and requested by IWF to carry out the assignment made pursuant to this section. CONTRACTOR hereby waives any so-called "droit moral" rights, "moral rights of authors," and all other similar rights however denominated throughout the world.

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

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, the CONTRACTOR hereby grants to IWF a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that the CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to IWF.

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

XVII. APPLICABLE FEDERAL LAW

The following Federal statutes and / or Executive Orders apply to work performed under this agreement:

1. Equal Employment Opportunity - By entering into this agreement CONTRACTOR agrees to comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. If consideration for work performed under this agreement under V. FEES is in excess of \$2000.00, and work performed under this agreement as found in Appendix B "Statement of Work" is for construction or repair, CONTRACTOR agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by

Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

3. If consideration for work performed under this agreement under V. FEES is in excess of \$2000.00, and work performed under this agreement as found in Appendix B "Statement of Work" is for construction or repair, CONTRACTOR agrees to comply with the the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").

4. If consideration for work performed under this agreement under V. FEES is in excess of \$2000.00, and work performed under this agreement as found in Appendix B "Statement of Work" is for construction or repair, or if consideration for work performed under this agreement under V. FEES is in excess of \$2500.00, and CONTRACTOR shall employ mechanics or laborers in the performance of the work found in Appendix B "Statement of Work", CONTRACTOR agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

5. If work performed under this agreement as found in Appendix B "Statement of Work" is for the performance of experimental, developmental, or research work the rights of the Federal Government and CONTRACTOR in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" shall be agreed to under separate agreement referencing IWF #CSGENFED XXXX.

6. If consideration for work performed under this agreement under V. FEES is in excess of \$100000.00, CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - If consideration for work performed under this agreement under V. FEES is in excess of \$100000.00 CONTRACTOR shall provide a Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements stating that CONTRACTOR will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

8. Debarment and Suspension (E.O.s 12549 and 12689) - By entering into this agreement CONTRACTOR states that it is not listed, and agrees to not in turn subcontract, if applicable, any work to a third part that is listed, on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." The Certificate of Debarment and Suspension, Appendix A, must be completed and signed by CONTRACTOR and returned as part of the signed Agreement.

9. CONTRACTOR agrees that IWF, the Federal awarding agency as referenced under V. FEES, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to the CONTRACTOR's performance under this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

XVIII. AMENDMENTS

Any amendments to this Agreement must be in writing and signed by authorized representatives of both IWF and CONTRACTOR.

XIX. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

XX. SIGNATURE AUTHORITY AND APPROVAL

The individuals signing below hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of IWF and CONTRACTOR and that IWF and CONTRACTOR enter into this Agreement according to the terms outlined in this document.

APPENDIX A: CERTIFICATE OF DEBARMENT AND SUSPENSION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

Instructions for Certification:

1. By signing and submitting this Agreement, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person, department, institution, or office to which this Agreement is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," "agreement," "contract", and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Agreement is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 41 CFR 105, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Agreement that it will include the clause titled "Certification Regarding Debarment Suspension, Ineligibility, and Voluntary Exclusion -- Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 41 CFR 105, debarred, suspended, declared ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from the federal procurement and non-procurement programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 41 CFR 105, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The prospective lower tier participant certifies, by submission of this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Agreement.

[END]

SAMPLE

EXHIBIT D

ECONOMIC DEVELOPMENT ADMINISTRATION ("EDA")
STANDARD TERMS AND CONDITIONS

Capacity Building Programs

These Standard Terms and Conditions apply to awards of capacity building programs under the Public Works and Economic Development Act of 1965, as amended, including the comprehensive amendment of the Economic Development Administration Reform Act of 1998 P.L. 105-393 (PWEDA), Sections 203, 207, and 209 (strategy grants), Federal laws, regulations, Executive Orders and OMB Circulars that apply to a previous award, except as noted in the Special Terms and Conditions, shall apply to an amendment or renewal of that award.

A. Statutory, Regulatory, Executive Order and Other Federal Requirements

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes, regulations, Executive Orders or OMB Circulars. To the extent that it is a summary, such term or condition is not in derogation of, or an amendment to, such Federal requirements. All statutes or regulations, whether or not referenced herein, are to be applied as amended on the date they are administered.

The Recipient shall comply, and require any contractors or subcontractors to comply, with PWEDA under which this award is made, the regulations issued pursuant thereto, and with all Federal, state, and local laws applicable to its undertaking and activities.

B. General Requirements

1. USE OF CONSULTANTS/CONTRACTORS: For all proposals and contracts where costs are expected to exceed \$100,000, the scope of work and the costs of such must be submitted to and approved by EDA prior to employment of such consultants or contractors. Recipients will ensure that any consultant or contractor paid from funds provided under this award is bound by all applicable award terms and conditions. EDA shall not be liable hereunder to a third party nor to any party other than the Recipient.

2. OTHER FUNDING SOURCES: Federal funds for this program shall not be used to replace any financial support previously provided or assured from any other source. The Recipient agrees that the general level of expenditure by the Recipient for the benefit of program area and/or program designated in the Special Terms and Conditions of this award, or any amendment or modification thereto, shall be maintained and not reduced as a result of the Federal share funds received under this program.

3. REIMBURSEMENT FOR TRAVEL: Travel by the Recipient confined to the EDA region(s) within which that Recipient is operating and/or to Washington, D.C., for purposes related to the award, does not need prior approval, as long as approved budgeted travel funding levels are not exceeded. Travel which is not in an approved work schedule plan must have prior approval of the Federal Program Officer.

4. RECIPIENT CONTRIBUTIONS: When all or part of the local share match is in-kind, the evaluation of such in-kind local share match is subject to reevaluation by EDA at any time, and any deficiency so determined by EDA shall be compensated by supplemental contributions by the Recipient as a condition of further disbursements by EDA.

5. PERFORMANCE MEASURES: The Recipient agrees to report on program performance and project outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act of 1993. The performance measures that apply to this project are included with and made a part of the grant award package in the Special Terms and Conditions. EDA will advise the Recipient in writing, within a reasonable period prior to time of submission, in the event there are any modifications in the performance measures.

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



March 2008

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS

PREFACE	1
A. FINANCIAL REQUIREMENTS	1
.01 Financial Reports	1
.02 Award Payments	1
.03 Federal and Non-Federal Sharing	2
.04 Budget Changes and Transfer of Funds Among Categories.....	3
.05 Indirect Costs	3
.06 Incurring Costs of Obligating Federal Funds Beyond the Expiration Date.....	5
.07 Tax Refunds	6
B. PROGRAMMATIC REQUIREMENTS	6
.01 Performance (Technical) Reports	6
.02 Unsatisfactory Performance	6
.03 Programmatic Changes	7
.04 Other Federal Awards with Similar Programmatic Activities	7
.05 Non-Compliance With Award Provisions	7
.06 Prohibition Against Assignment by the Recipient.....	7
.07 Disclaimer Provisions	7
C. NON-DISCRIMINATION REQUIREMENTS.....	8
.01 Statutory Provisions	8
.02 Other Provisions.....	8
.03 Title VII Exemption for Religious Organizations	9
D. AUDITS	9
.01 Organization-Wide, Program-Specific, and Project Audits.....	9
.02 Audit Resolution Process	10
E. DEBTS	II
.01 Payment of Debts Owed the Federal Government	II
.02 Late Payment Charges	12
.03 Barring Delinquent Federal Debtors From Obtaining Federal Loans or Loan Insurance Guarantees.....	12
.04 Effect of Judgment Lien On Eligibility For Federal Grants, Loans, or Programs	12
F. INDIVIDUAL BACKGROUND SCREENING	13
.01 Results of Individual Background Screening	13
.02 Action(s) Taken as a Result of Individual Background Screening	13
G. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) .	14
H. DRUG-FREE WORKPLACE	14
I. LOBBYING RESTRICTIONS.....	14
.01 Statutory Provisions	14
.02 Disclosure of Lobbying Activities	14
J.....CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS	15
.01 Code of Conduct for Recipients.....	15
.02 Applicability of Award Provisions to Subrecipients	15

.03	Competition and Codes of Conduct for Subawards.....	16
.04	Applicability of Provisions to Subawards, Contracts, and Subcontracts.....	16
.05	Minority Owned Business Enterprise	17
.06	Subaward and/or Contract to a Federal Agency	18
K.	PROPERTY	18
.01	Standards.....	18
.02	Real Property	18
L.	ENVIRONMENTAL REQUIREMENTS.....	19
.01	The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 -4327)	19
.02	Floodplain Management, EO 11988 and, Protection of Wetlands, EO 11990, May 24, 1977	19
.03	Clean Air Act, Clean Water Act, and EO 11738	20
.04	The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 et seq.)	20
.05	The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)	20
.06	The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.)	20
.07	The Coastal Barriers Resources Act, (16 U.S.C. § 3501 et seq.).....	20
.08	The Wild and Scenic Rivers Act, as amended (16 U.S.C. §§ 1271 et seq.)	20
.09	The Safe Drinking Water Act of 1974, as amended (42 U.S.C. §§ 300f-j)	21
.10	The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §§ 6901 etseq.).....	21
.11	The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended, (42 U.S.C. §§ 9601 etseq.).....	21
.12	Environmental Justice in Minority Populations and Low Income Populations, EO 12898, February II, 1994.....	21
M.	MISCELLANEOUS REQUIREMENTS	21
.01	Criminal and Prohibited Activities	21
.02	Foreign Travel	22
.03	American-Made Equipment and Products	23
.04	Intellectual Property Rights	23
a.	Inventions.....	23
1.	Ownership	23
(a)	Recipient	23
(b)	Department.....	23
(c)	Inventor/Employee.....	23
(d)	Joint inventions	23
2.	Responsibilities - iEdison	24
b.	Patent Notification Procedures	24
c.	Data, Databases, and Software.....	24
d.	Copyright	24
.05	Increasing Seat Belt Use in the United States.....	25
.06	Research Involving Human Subjects	25
.07	Federal Employee Expenses	26
.08	Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.....	26

.09	Minority Serving Institutions (MSIs) Initiative	26
.10	Research Misconduct	27
.11	Publications, Videos and Acknowledgement of Sponsorship	27
.12	Care and Use of Live Vertebrate Animals	27
.13	Homeland Security Presidential Directive – 12.....	28
.14	Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations	28
.15	The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 CFR Part 175.....	29
.16	The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282).....	29

PREFACE

The recipient and any subrecipients must, in addition to the assurances made as part of the application, comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, terms and conditions, and approved applications.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the Federal Register, EOs, OMB circulars, Department of Commerce (DOC) Financial Assistance Standard Terms and Conditions, agency standard award conditions (if any), and special award conditions. Special award conditions may amend or take precedence over DOC standard terms and conditions, on a case-by-case basis, when allowed by the DOC standard term and condition.

Some of the DOC terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes, or regulations published in the Federal Register or Code of Federal Regulations (CFR), EOs, OMB circulars or the assurances (Forms SF-4248, 424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, EO, or OMB circular.

A. FINANCIAL REQUIREMENTS

.01 Financial Reports

- a. The recipient shall submit a "Financial Status Report" (SF-269) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final SF-269 shall be submitted within 90 days after the expiration date of the award.
- b. The reports must be submitted to the Grants Officer in hard copy (no more than an original and two copies), or electronically when specified in the special award conditions.

.02 Award Payments

- a. The advance method of payment shall be authorized unless otherwise specified in a special award condition. The Grants Officer determines the appropriate method of payment. Payments will be made through electronic funds transfers directly to the

recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 and the Cash Management Improvement Act. The DOC Award Number must be included on all payment-related correspondence, information, and forms.

- b. When the "Request for Advance or Reimbursement" (SF-270) is used to request payment, the recipient shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. When the SF-270 is used, the recipient must complete the SF-3881, "ACH Vendor Miscellaneous Payment Enrollment Form," and return it to the Grants Officer.
- c. Unless otherwise provided for in the award terms, payments under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP: (1) ASAP account number –the award number found on the cover sheet of the award; (2) Agency Location Code (ALC); and Region Code. Recipients enrolled in the ASAP system do not need to submit a "Request for Advance or Reimbursement" (SF-270), for payments relating to their award. Awards paid under the ASAP system will contain a special award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.
- d. Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30-day period. Advanced funds not disbursed in a timely manner and any applicable interest must be promptly returned to DOC. If a recipient demonstrates an unwillingness or inability to establish procedures which will minimize the time elapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.

.03 Federal and Non-Federal Sharing

- a. Awards which include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal

share shall not exceed the total Federal dollar amount authorized by the award.

- b. The non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over the life of the award.

.04 Budget Changes and Transfer of Funds Among Categories

- a. Requests for budget changes to the approved estimated budget in accordance with the provision noted below must be submitted to the Grants Officer who shall make the final determination on such requests and notify the recipient in writing.
- b. Transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is \$100,000 or less. For awards in which the Federal share of the project exceeds \$100,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct cost transfers exceed 10 percent of the total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same criteria apply to the cumulative amount of transfer of funds among programs, functions, and activities. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, this does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget.
- c. The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

.05 Indirect Costs

- a. Indirect costs will not be allowable charges against the award unless specifically included as a cost item in the approved budget incorporated into the award. (The term "indirect cost" has been replaced with the term "facilities and administrative costs" under OMB Circular A-21, "Cost Principles for Educational Institutions.")
- b. Excess indirect costs may not be used to offset unallowable direct costs.

- c. If the recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs:

1. (a) State, Local, and Indian Tribal Governments; Educational Institutions; and Non-Profit Organizations (Non-Commercial Organizations)

For the above listed organizations, cognizant federal agency is generally defined as the agency that provides the largest dollar amount of direct federal funding. For those organizations for which DOC is cognizant or has oversight, DOC or its designee will either negotiate a fixed rate with carry forward provisions for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient's cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

(b) Commercial Organizations

For commercial organizations, cognizant federal agency is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. If the only federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant federal agency for the purpose of indirect cost negotiations. For those organizations for which DOC is cognizant, DOC or its designee will negotiate a fixed rate with carryforward provisions for the recipient. Fixed rate means an indirect cost rate which has the same characteristics as a pre-determined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of the subsequent period.

DOC or its designee will negotiate indirect cost rates using the cost principles found in 48 CFR Part 31, "Contract Cost Principles and Procedures." For guidance on how to put an indirect cost plan together go to:

<http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm>

2. Within 90 days of the award start date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Acquisition Management

U.S. Department of Commerce

14th Street and Constitution Avenue, N.W., Room 6412

Washington, DC 20230

3. The recipient can use the fixed rate proposed in the indirect cost plan until such time as the DOC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carryforward provision used in calculating next year's rate. This calculation of actual indirect costs and the carryforward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each of the recipients' fiscal years.
- d. When DOC is not the oversight or cognizant Federal agency, the recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.
- e. If the recipient fails to submit the required documentation to DOC within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
- f. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of:
 1. The line item amount for the Federal share of indirect costs contained in the approved budget of the award; or
 2. The Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

.06 Incurring Costs of Obligating Federal Funds Beyond the Expiration Date

- a. The recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award. The only costs which are authorized for a period of up to 90 days following the award expiration date are those strictly associated with closeout activities. Closeout activities are normally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer.
- b. Unless otherwise authorized in 15 CFR § 14.25(e)(2) or a special award condition,

any extension of the award period can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the expiration date.

- c. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

.07 Tax Refunds

Refunds of FICA/FUTA taxes received by the recipient during or after the award period must be refunded or credited to DOC where the benefits were financed with Federal funds under the award. The recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the award end date.

B. PROGRAMMATIC REQUIREMENTS

.01 Performance (Technical) Reports

- a. The recipient shall submit performance (technical) reports in triplicate (one original and two copies) or electronically to the Federal Program Officer as specified in the special award conditions in the same frequency as the Financial Status Report (SF-269) unless otherwise authorized by the Grants Officer.
- b. Unless otherwise specified in the award provisions, performance (technical) reports shall contain brief information as prescribed in the applicable uniform administrative requirements incorporated into the award.

.02 Unsatisfactory Performance

Failure to perform the work in accordance with the terms of the award and maintain at least a satisfactory performance rating or equivalent evaluation may result in designation of the recipient as high risk and assignment of special award conditions or other further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions."

.03 Programmatic Changes

The recipient shall report programmatic changes to the Grants Officer, and shall request prior approvals in accordance with 15 CFR § 14.25 or 15 CFR § 24.30.

.04 Other Federal Awards with Similar Programmatic Activities

The recipient shall immediately provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

.05 Non-Compliance With Award Provisions

Failure to comply with any or all of the provisions of the award may have a negative impact on future funding by DOC and may be considered grounds for any or all of the following actions: establishment of an account receivable, withholding payments under any DOC awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any DOC active awards, and termination of any DOC active awards.

.06 Prohibition Against Assignment by the Recipient

The recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

.07 Disclaimer Provisions

- a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for the actions of the recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any subaward or subcontract under this award.
- b. The acceptance of this award by the recipient does not in any way constitute an agency relationship between the United States and the recipient.

C. NON-DISCRIMINATION REQUIREMENTS

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

.01 Statutory Provisions

- a. Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d *et seq.*) and DOC implementing regulations published at 15 CFR Part 8 which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 USC §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794) and DOC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance;
- d. The Age Discrimination Act of 1975, as amended (42 USC §§ 6101 *et seq.*) and DOC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- e. The Americans with Disabilities Act of 1990 (42 USC §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- f. Any other applicable non-discrimination law(s).

.02 Other Provisions

- a. Parts II and III of EO 11246 (30 FR 12319, 1965), as amended by EO 11375 (32 FR 14303, 1967) and 12086 (43 FR 4650 I, 1978), require Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that EO and Department of Labor regulations implementing EO 11246 (41 CFR § 60-1.4(b), 1991).

- b. EO 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting Limited English Proficient (LEP) persons.

.03 Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 USC App. 3, § 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. When the OIG requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, state or local audit entity.

.01 Organization-Wide, Program-Specific, and Project Audits

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Recipients that are subject to the provisions of OMB Circular A-133 and that expend \$500,000 or more in a year in Federal awards shall have an audit conducted for that year in accordance with the requirements contained in OMB Circular A-133. A copy of the audit shall be submitted to the Bureau of the Census, which has been designated by

OMB as a central clearinghouse. The address is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

- b. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 CFR § 14.26(c) and (d), for-profit hospitals, commercial entities, and other organizations not required to follow the audit provisions of OMB Circular A-133 shall have an audit performed when the federal share amount awarded is \$500,000 or more over the duration of the project period. An audit is required at least once every two years using the following schedule for audit report submission.
 - I. For awards less than 24 months, an audit is required within 90 days from the project expiration date, including the close-out period for the award.
 2. For 2-, or 3 -year awards, an audit is required within 90 days after the end of the first year and within 90 days from the project expiration date including the close-out period for the award.
 3. For 4-, or 5-year awards, an audit is required within 90 days after the end of the first year and third year, and within 90 days from the project expiration date including the close-out period for the award.
- c. Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, § .235. The Recipient may include a line item in the budget for the cost of the audit. A copy of the program-specific audit shall be submitted to the Grants Officer and to the OIG at the following address:

Office of Inspector General U.S.
Department of Commerce Atlanta
Regional Office of Audits
401 West Peachtree Street, N.W., Suite 2742
Atlanta, GA 30308

.02 Audit Resolution Process

- a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence

whenever audit results are disputed.

- b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 FR 4053), a recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 1. Unless the Inspector General determines otherwise, the recipient has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
 2. The recipient has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
 3. The DOC shall review the documentary evidence submitted by the recipient and shall notify the recipient of the results in an Audit Resolution Determination Letter. The recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the audit resolution determination.
 4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
 5. The DOC shall review the recipient's appeal and notify the recipient of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed the Federal Government

Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. In accordance with 15 CFR § 21.4, a debt will be considered delinquent if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the imposition of late payment charges as noted

below. In addition, failure to pay the debt or establish a repayment agreement by the due date, or if there is no due date, within 30 days of the billing date, will also result in the referral of the debt for collection action, including referral to the Treasury Offset Program, 31 C.F.R. § 285.5, and may result in DOC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions". Funds for payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

.02 Late Payment Charges

- a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act (31 U.S.C. 3701 *et seq.*), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. This rate is published in the *Federal Register* by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. A penalty charge shall be assessed on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent.
- c. An administrative charge shall be assessed to cover processing and handling the amount due.

.03 Barring Delinquent Federal Debtors From Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 37208, unless waived, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

.04 Effect of Judgment Lien On Eligibility For Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201 (e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant, or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

F. INDIVIDUAL BACKGROUND SCREENING

An individual background screening will be performed by the OJG on key individuals of organizational units associated with the application at the beginning of the award and at three year intervals thereafter for the life of the award unless (1) the proposed award amount is \$100,000 or less; (2) applicants are accredited colleges and universities; (3) applicants are units of a State or local government; (4) applicants are economic development districts designated by EDA, including those entities whose designations are pending, and councils of governments; or (5) the key individual(s) is/are elected officials of State and local governments who are serving in capacities other than their elected capacities when applying for assistance. In addition, if there is a change in the status of the organization and/or key individuals, or the program officer, OIG, or Grants Officer believes there is good reason to conduct a review sooner, a background screening may be required more frequently. Individual background screenings are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges (e.g., fraud, theft, perjury), or other matters which significantly reflect on the applicant's business integrity, responsibility, or financial integrity. Key individuals of non-exempt organizations associated with this award shall complete Form CD-346, "Applicant for Funding Assistance." An original signature is required. The form is to be submitted to the Grants Specialist named in the award document within 30 days of receipt of this award.

.01 Results of Individual Background Screening

DOC reserves the right to take any of the actions described in section F.02 if any of the following occurs as a result of the individual background screening:

- a. A key individual fails to submit the required Form CD-346, "Applicant for Funding Assistance" within 30 days of receipt of this award;
- b. A key individual makes a false statement or omits a material fact on the Form CD-346;
- c. The individual background screening reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and/or key individual.

.02 Action(s) Taken as a Result of Individual Background Screening

If any situation noted in F.01 occurs, DOC, at its discretion, may take one or more of the following actions:

- a. Consider suspension/termination of an award immediately for cause;
- b. Require the removal of any key individual from association with management and/or implementation of the award and require Grants Officer approval of personnel

replacements;

- c. Require the recipient to make other changes as appropriate; and/or
- d. Designate the recipient as high risk and amend the award to assign special award conditions, as appropriate, including making changes with respect to the method of payment and/or financial reporting requirements.

G. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The recipient shall comply with the provisions of Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions.

H. DRUG-FREE WORKPLACE

The recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, title V, Sec. 5153, as amended by Public Law 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 702) and DOC implementing regulations published at 15 CFR Part 29, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)" (published in the *Federal Register* on November 26, 2003, 68 FR 66534), which require that the recipient take steps to provide a drug-free workplace.

I. LOBBYING RESTRICTIONS

.01 Statutory Provisions

The recipient shall comply with the provisions of 31 U.S.C. § 1352 and DOC implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying.

.02 Disclosure of Lobbying Activities

The recipient receiving in excess of \$100,000 in Federal funding shall submit a

completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

J. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

.01 Code of Conduct for Recipients

Pursuant to the certification in SF-424B, paragraph 3, the recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award.

.02 Applicability of Award Provisions to Subrecipients

- a. The recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable cost principles, administrative, and audit requirements.
- b. A recipient is responsible for subrecipient monitoring, including the following:
 - I. Award Identification- At the time of the award, identifying to the subrecipient the Federal award information (e.g., CFDA title and number, award name, name of Federal agency) and applicable compliance requirements.
 2. During-the-Award Monitoring- Monitoring the subrecipient's use of Federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
 3. Subrecipient Audits- Ensuring that subrecipients expending \$500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of OMB Circular A-133, and that the required audits are completed within 9 months of the end of the subrecipient's audit period. In addition, the recipient is required to issue a management decision on audit findings within 6 months after receipt of the subrecipient's audit report, and ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings.

In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.

.03 Competition and Codes of Conduct for Subawards

- a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.
- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts

- a. The recipient shall include the following notice in each request for applications or bids:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a

DOC official) are subject to 2 CFR Part 1326, Subpart C "Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR Part 28, "New Restrictions on Lobbying." Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying--Lower Tier Covered Transactions," completed without modification.

- b. The recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)."
- c. The recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C § 1352, as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." The recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the recipient. The recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

.05 Minority Owned Business Enterprise

DOC encourages recipients to utilize minority and women-owned firms and enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist recipients in matching qualified minority owned enterprises with contract opportunities. For further information contact:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

.06 Subaward and/or Contract to a Federal Agency

- a. The recipient, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DOC and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the recipient in writing of the final determination.

K. PROPERTY

.01 Standards

The recipient shall comply with the property management standards as stipulated in the applicable uniform administrative requirements.

.02 Real Property

The recipient shall execute a security interest or other statement of the Federal Interest in real property acquired or improved with Federal funds, acceptable in form and substance to the DOC, which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate. The recipient must provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, shall be returned to the Grants Officer. The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from the Grants Officer. No funds under this award shall be released until the recipient has complied with this provision, unless other arrangements satisfactory to the DOC are made.

L. ENVIRONMENTAL REQUIREMENTS

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with an early consideration of potential environmental impacts that projects funded with Federal assistance may have on the environment. The recipient and subrecipients must comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

.01 The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements. Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with the National Environmental Policy Act. Recipients may also be requested to assist NOAA in drafting of an environmental assessment, if the Department determines an assessment is required, when the award activities remain subject to Federal authority and control. If additional information is required during the period of the award, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a project may have on the environment.

.02 Floodplain Management, EO 11988 and, Protection of Wetlands, EO 11990, May 24, 1977

Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

.03 Clean Air Act, Clean Water Act, and EO 11738

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), Clean Water Act (33 U.S.C. §§ 1251 et seq.), and EO 11738, and shall not use a facility on EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR § 15.5, and shall notify the Program Officer in writing if it intends to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

.04 The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 et seq.)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

.05 The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)

Recipients must identify any impact or activities which may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the required reviews under the Endangered Species Act, as applicable.

.06 The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.)

Funded projects must be consistent with a coastal state's approved management program for the coastal zone.

.07 The Coastal Barriers Resources Act, (16 U.S.C. § 3501 et seq.)

Restrictions are placed on Federal Funding for actions within the Coastal Barrier System.

.08 The Wild and Scenic Rivers Act, as amended (16 U.S.C. §§ 1271 et seq.)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

.09 The Safe Drinking Water Act of 1974, as amended (42 U.S.C. §§ 300f-j)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

.10 The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §§ 6901 et seq.)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

.11 The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended, (42 U.S.C. §§ 9601 et seq.)

These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.

.12 Environmental Justice in Minority Populations and Low Income Populations, EO 12898, February 11, 1994.

This order identified and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

M. MISCELLANEOUS REQUIREMENTS

.01 Criminal and Prohibited Activities

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including money representing grants, loans or other benefits).
- b. False statements (18 U.S.C. §§ 287 and 1001), provides that whoever makes or

presents any false, fictitious, or fraudulent statements, representations, or claims against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.

- c. False Claims Act (31 U.S.C. 3729 *et seq.*), provides that suits under this act can be brought by the government, or a person on behalf of the government, for false claims under Federal assistance programs.
- d. Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

.02 Foreign Travel

- a. The recipient shall comply with the provisions of the Fly America Act (49 USC § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
- c. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 USC § 40118(b). DOC is not aware of any bilateral agreements which meet these requirements. Therefore, it is the responsibility of the recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.
- d. If a foreign air carrier is anticipated to be used for any part of foreign travel, the recipient must receive prior approval from the Grants Officer. When requesting such approval, the recipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.142, which requires the recipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel, name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the recipient not being reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

.03 American-Made Equipment and Products

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.

.04 Intellectual Property Rights

- a. Inventions. The rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are described in more detail in 37 CFR Part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14, which is hereby incorporated by reference into this award.

1. Ownership.

- (a) Recipient. The recipient has the right to own any invention it makes (conceived or first actually reduced to practice) or made by its employees. The recipient may not assign its rights to a third party without the permission of DOC unless it is to a patent management organization (i.e., a university's Research Foundation.) The recipient's ownership rights are subject to the Government's nonexclusive paid-up license and other rights.
- (b) Department. If the recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the recipient. DOC owns any invention made solely by its employees but may license the recipient in accordance with the procedures in 37 CFR Part 404.
- (c) Inventor/Employee. If neither the recipient nor the Department is interested in owning an invention by a recipient employee, the recipient, with the written concurrence of DOC, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9.
- (d) Joint inventions. Inventions made jointly by a recipient and a DOC employee will be owned jointly by the recipient and DOC. However, DOC may transfer its rights to the recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the recipient is willing to patent and license the invention usually in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one recipient and DOC employee). The agreement will be prepared by DOC and may include other provisions, such as a royalty free license to the Government and certain other entities. 35 U.S.C. § 202(e) also

authorizes the recipient to transfer its rights to the Government which can agree to share royalties similarly as described above.

2. Responsibilities- iEdison. The recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The recipient is expected to comply with all the requirements of the standard patent rights clause and 37 CFR Part 40 I. Recipients of DOC financial assistance awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iEdison.gov. Recipients may obtain a waiver of this electronic submission requirement by providing to DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

b. Patent Notification Procedures.

Pursuant to E.O. 12889, DOC is required to notify the owner of any valid patent covering technology whenever the DOC or its financial assistance recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient must notify the Grants Officer.

However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.

c. Data, Databases, and Software.

The rights to any work produced or purchased under a DOC Federal financial assistance award are determined by 15 CFR § 24.34 and 15 CFR § 14.36. Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC Federal financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.

d. Copyright.

The recipient may copyright any work produced under a DOC Federal financial assistance award subject to DOC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DOC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in

the United States. On occasion, DOC may ask the recipient to transfer to DOC its copyright in a particular work when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

.05 Increasing Seat Belt Use in the United States

Pursuant to EO 13043, recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.

.06 Research Involving Human Subjects

- a. All proposed research involving human subjects must be conducted in accordance with 15 CFR Part 27, "Protection of Human Subjects." No research involving human subjects is permitted under this award unless expressly authorized by Special Award Condition, or otherwise in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. DOC regulations, 15 CFR Part 27, require that recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. This documentation may include:
 1. Documentation establishing approval of the project by an institutional review board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines, see 15 CFR § 27.103;
 2. Documentation to support an exemption for the project under 15 CFR § 27.101 (b);
 3. Documentation to support deferral for an exemption or IRB review under 15 CFR § 27.118;
 4. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred

and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

.07 Federal Employee Expenses

Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any Federal employee unless specifically approved in the terms of the award. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants regardless of the source.

.08 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

Pursuant to EO 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," unless the project is exempted under section S(c) of the order, bid specifications, project agreements, or other controlling documents for construction contracts awarded by recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not:

- a. include any requirement or prohibition on bidders, offerors, contractors, or subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction project(s); or
- b. otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

.09 Minority Serving Institutions (MSIs) Initiative

Pursuant to Eos 13256, 13230, and 13270, DOC is strongly committed to broadening the participation of MSIs in its financial assistance programs. DOC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance

programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

.10 Research Misconduct

Scientific or research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It does not include honest errors or differences of opinion. The recipient organization has the primary responsibility to investigate allegations and provide reports to the Federal Government. Funds expended on an activity that is determined to be invalid or unreliable because of scientific misconduct may result in a disallowance of costs for which the institution may be liable for repayment to the awarding agency. The Office of Science and Technology Policy at the White House published in the *Federal Register* on December 6, 2000, a final policy that addressed research misconduct. The policy was developed by the National Science and Technology Council (65 FR 76260). The DOC requires that any allegation be submitted to the Grants Officer, who will also notify the OIG of such allegation. Generally, the recipient organization shall investigate the allegation and submit its findings to the Grants Officer. The DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DOC's final determination.

.11 Publications, Videos and Acknowledgement of Sponsorship

Publication of the results or findings of a research project in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting scientific information. It is also a constructive means to expand access to federally funded research. The recipient is required to submit a copy to the funding agency and when releasing information related to a funded project include a statement that the project or effort undertaken was or is sponsored by DOC. The recipient is also responsible for assuring that every publication of material (including Internet sites and videos) based on or developed under an award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "This [report/video] was prepared by [recipient name] under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce." This also applies to videos produced under DOC financial assistance awards.

.12 Care and Use of Live Vertebrate Animals

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Public Law

89-544), as amended, (7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations, 9 CFR Parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); The Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

.13 Homeland Security Presidential Directive -12

If the performance of a grant award requires recipient organization personnel to have unsupervised physical access to a Federally controlled facility for more than 180 days or access to a Federal information system, such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that they are eligible for employment within the US. Any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive -12, FIPS PUB 201, and OMB Memorandum M-05-24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

.14 Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

- a. This clause applies to the extent that this financial assistance award involves access to export-controlled information or technology.
- b. In performing this financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual and electronic access to export-controlled information and technology.

c. Definitions

- I. Deemed Export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is "deemed" to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii).
 2. Export-controlled information and technology. Export-controlled information and technology subject to the EAR (15 CFR §§ 730-774), implemented by the DOC Bureau of Industry and Security, or the International Traffic In Arms Regulations (ITAR) (22 CFR §§ 120-130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-use items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.
- d. The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.
 - e. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, Executive Orders or regulations.
 - f. The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled information technology.

.15 The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 CFR Part 175.

This Act authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or subrecipient engages in certain activities related to trafficking in persons.

.16 The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282).

This Act requires that the Federal government establish a single searchable awards website by January 1, 2008 to enable the public to see where Federal funds for grant and contract awards are being spent. Subaward and subcontract data will be required on the website by January 1, 2009. Funding data retroactive to October 1, 2006 must be reported by all Federal agencies and their recipient and subrecipient organizations.

Data elements will include:

Name of entity receiving award;

Award amount;

Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;

Location of: entity, primary location of performance
(City/State/Congressional District/Country; and

Unique identifier of entity.

The data will be required within 30 days of an award. The DOC will be implementing this Act, which will require recipients and subrecipients to report the required data.