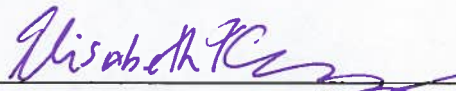


**REQUEST FOR PROPOSALS
(RFP) NO. GEPA/GEO 003-011**

**ENERGY PERFORMANCE SCORE
PLUS
WHOLE HOUSE PROGRAM FOR RESIDENTIAL CUSTOMERS
&
ENERGY EFFICIENCY CONTRACTORS TO CONDUCT COMPREHENSIVE
HOME ENERGY RETROFITS**




ELISABETH T. CRUZ, Esq.,
Administrator, GEPA/GEO

**Guam Environmental Protection Agency/Guam Energy Office
548 North Marine Corps Drive,
Tamuning, Guam 96913
Tel.: 1-671-646-4361/Fax: 1-671-649-1215
www.guamenergy.com**

SUBMISSION DEADLINE: JANUARY 18, 2011

(RFP) NO. GEPA/GEO 003-011
ENERGY PERFORMANCE SCORE
PLUS
WHOLE HOUSE PROGRAM FOR RESIDENTIAL CUSTOMERS
&
ENERGY EFFICIENCY CONTRACTORS TO CONDUCT COMPREHENSIVE HOME
ENERGY RETROFITS

Table of Contents

INTRODUCTION.....	3
I. <u>SERVICES REQUIRED</u>.....	4
II. <u>PRE-PROPOSAL CONFERENCE</u>	4
III. <u>PROPOSALS</u>.....	4,5
IV. <u>PACKING OF PROPOSALS</u>.....	5
V. <u>SCOPE OF WORK</u>	6
VI. <u>SERVICES OF THE CONTRACTOR</u>.....	9
A. <u>STATEMENT OF QUALIFICATIONS</u>.....	9
B. <u>ENERGY PERFORMANCE SCORE APPLICATION REVIEW</u>.....	10
C. <u>ENERGY PERFORMANCE SCORE CONDITIONS</u>.....	10
D. <u>QUALITY ASSURANCE/QUALITY CONTROL</u>.....	10
E. <u>TECHNICAL PROGRESS REPORTS</u>.....	10
F. <u>OPTIONAL SERVICES & PROGRAM ADMINISTRATOR</u>.....	10
EVALUATION CRITERIA AND SELECTION PROCESS.....	9
VII. <u>EVALUATION CRITERIA</u>.....	11
VIII. <u>SELECTION PROCESS</u>.....	12
GENERAL TERMS AND CONDITIONS.....	13
ARRA SPECIAL PROVISIONS.....	18
USDOE SPECIAL TERMS AND CONDITIONS.....	22
NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS...35	
CODE OF FEDERAL REGULATIONS.....	45
APPENDIX TO PART 600.....	47

INTRODUCTION

The GEPA/GEO hereby submits this notice stating the following have been funded through the U.S. Department of Energy's Energy Efficiency and Conservation Block Grant (EECBG), Award No.DE-EE0000809.

The Guam Environmental Protection Agency/Guam Energy Office (GEPA/GEO) has made the determination to acquire the services of an Energy Performance Score Contractor Energy Auditor to evaluate the energy performance and associated carbon emissions of single-family and small-multi-family dwellings within the overall project timeline of March 18, 2013.

A reasonable inquiry has been conducted by GEPA/GEO as to personnel available within the Government of Guam to provide the services of a Professional Energy Performance Scorer, to provide training, administration, web portal, and a rating database for GEPA/GEO. The inquiry has determined that the government does not have the personnel or resources to perform the services required under the proposed Contract Agreement.

The GEPA/GEO intends to publish an RFP and come to terms for a multi-year Contract Agreement with the top-rated Contractor after the proper procedures have been fulfilled through the competitive process. Firm-fixed priced contracts are preferred under the American Recovery and Reinvestment Act (ARRA), and exceptions must be documented.

The GEPA/GEO is of the understanding that the former GEPA/GEO Administrator, Lorilee T. Crisostomo, has researched, developed and produced the scope of work contained within RFP No. GEPA/GEO 003-011.

I. SERVICES REQUIRED

The Guam Environmental Protection Agency/Guam Energy Office (hereinafter referred to as the GEPA/GEO) invites qualified firms and individuals (hereinafter referred to as the "Contractor") to submit a Proposal to hire a Contractor experienced in the management of Energy Performance Score (EPS) programs to evaluate the energy performance and associated carbon emissions of single-family and small-multi-family dwellings.

This Request for Proposal (RFP) is a guideline for submitting proposals for interested Contractors. All procedures and criteria covered in this RFP should be duly noted and answered accordingly by the Contractor as it is the intent of the GEPA/GEO to enforce proper procedure as required by the American Recovery and Reinvestment Act (ARRA) Grant.

II. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held on **January 10, 2011 at 10:00 AM**, at the Guam Energy Office, located at 548 North Marine Corps Drive, Tamuning, Guam 96913, to answer any questions regarding this Request for Proposals (RFP). GEPA/GEO will accept additional questions, in writing, regarding this RFP after the pre-proposal conference no later than January 18, 2011. GEPA/GEO's response to all questions shall be made available in writing within six (6) working days following the pre-proposal conference.

III. PROPOSALS

Proposals, in one (1) original plus five (5) copies, must be received no later than **4:00 p.m., January 18, 2011**, at the GEPA/GEO main office at 548 North Marine Corps Drive, Tamuning, Guam 96913. Proposals shall not be submitted via electronic mail or facsimile. The proposals shall contain the following information:

1. Name and address of the Contractor's local and main (if any) offices, including the name and telephone/facsimile numbers of the person to be contacted relative to this proposal.
2. A detailed plan or strategy for providing the requested services as contained herein and in the Scope of Work (SOW), supplying as much detail as practical.
3. A description of the Contractor's experience and expertise as related to the

work required, specifically with regard to energy audits.

4. A proposed timeline describing milestones for accomplishing the work for this project.
5. A description of the experience and qualifications of all individuals to perform the requested services. Include the percentage of time each person will be allocated to perform this project. **The successful Contractor may not substitute personnel other than those listed without prior approval from the GEPA/GEO.**
6. A listing of other contracts under which services similar to the required work in scope, size, cost, or discipline that were performed or undertaken within the last five years.
7. Any additional information that the Contractor feels will aid the Government in accurately determining its qualifications.
8. A statement indicating that those portions of the proposal that contain trade secrets or proprietary data, if any, must remain confidential.
9. Identity any proposed subcontractor(s), provide their statement of qualifications, and the percent (%) participation of the proposed subcontractor(s) in the project. **Subcontractors cannot include private law firms or attorneys.**
10. **Appendix of Forms (Attachment A).** Complete the following forms contained in Appendix I of this package. These forms are **mandatory**. Failure to complete and submit Form D and Form E will automatically disqualify your proposal as being non-responsive, and it will not be evaluated.
 - Form A Affidavit Disclosing Ownership and Commissions
 - Form B Affidavit re Non-Collusion
 - Form C Affidavit re No Gratuities or Kickbacks
 - Form D Affidavit re Ethical Standards
 - Form E Declaration re Compliance with U.S. Department of Labor Wage Determination
 - Form F Affidavit re Contingent Fees

IV. PACKING OF PROPOSAL

1. **Number of Copies:** Please provide the original proposal plus five (5) copies.
2. **Sealed Envelope or Container:** The original proposal and five (5) copies

must be placed in an envelope or other container and sealed.

- 3. Information on Sealed Envelope or Container:** On the face of the sealed envelope or container, the following information shall be clearly marked:

Proposal for Energy Performance Score *PLUS* Whole House Program for Residential Customers & Energy Efficiency Contractors to Conduct Comprehensive Home Energy Retrofits.

Guam Environmental Protection Agency/Guam Energy Office
Submitted by: [the offering individual's or firm's name and address]
[Indicate date of submission]

Type of Services: [Energy Audit and Consulting Services]
Attention: Elisabeth T. Cruz, Esq., Administrator, GEPA/GEO

Notice:

The GEPA/GEO reserves the unqualified right, in its sole and absolute discretion, to reject any and all proposals that it deems, under all circumstances, will not serve the best interest of the Government of Guam.

V. SCOPE OF WORK

It is the policy of Guam to conserve energy and improve energy efficiency. To this end, the Guam Energy Office (GEO) is seeking to improve energy efficiency in residential dwellings throughout Guam and wishes to target single family as well as multiple-dwelling units to audit, retrofit, and measure energy efficiency improvements.

This Request for Proposals (RFP) seeks proposals to develop and implement a "Whole House Program" that will utilize an audit and rebate-to-homeowners approach to incentivize energy saving retrofits, thereby implementing a holistic approach improving residential energy efficiency. The Whole House Program will encourage contractors and residential customers to approach the house as an integrated system rather than a collection of separate parts.

In this RFP, GEPA/GEO sets forth the elements and performance standards required in the Whole House Program. The GEPA/GEO seeks proposals that will enable residential customers and energy efficiency contractors to audit, evaluate, and deliver comprehensive home energy retrofits, and will also provide data to measure the effectiveness of the program. The program also includes an instant ramp-up of proven methods for energy efficiency that have been recommended for Guam such as a "cool roofs program" so that instant savings can be attained and results of the program may be held out as examples to the larger community.

Program Goals

1. Retrofit 1,000 homes or multifamily units according to DOE energy guidelines.
2. Use DOE Guidelines and Best-test approved software
3. Resident participation – building owners pay for at least 25% of retrofitting costs.
4. Contractor provides program administration services
5. The implementation shall also include robust reporting and analysis enabling GEPA/GEO to:
 - Capture energy savings credit for energy efficiency attribution;
 - Facilitate reporting needs with federally-funded government programs; and
 - Obtain rich business intelligence about Customers' utilization of the comprehensive program to measure their effectiveness and drive program improvements.

1) Audit – The Contractor will conduct an energy audit or assessment of each dwelling for building owners that agree to participate in the program, including the retrofit, reporting, and monitoring aspects of the Whole House Program;

2) Custom Work Plan – The contractor will confer with the owner and develop and provide a written customized work scope for each dwelling, based on the assessment of the home or building's specific energy use characteristics. The work scope will indentify the most cost-effective energy reduction measures first, and include total installation costs and energy reduction estimates for each measure, as well as an estimate for total energy use reduction possible.

3) Retrofit and Rebate – The contractor will develop and manage a rebate program (cash incentives) for homeowners owners that is paid according to the level of energy use reduction achieved.

4) Third Party Confirmation - The contractor shall participate in third-party confirmation of energy use reduction estimates and measurements. Rebate example:

Modeled Energy Use Reduction	Rebate Amount*
10%	\$1,000
15%	\$1,500
20%	\$2,000
25%	\$2,500
30%	\$3,000
35%	\$3,500
40%	\$4,000
50%	\$5,000

* Up to maximum 75% of total project costs up to \$5,000. Rebate amounts will be determined based on available funding and subject to the approval of GEPA/GE O.

4) Separate from the Retrofit program, the Contractor will run a program designed for instant energy savings based on proven and recommended technologies. High priority technologies for this RFP include:

- Converting up to 1,000 dwellings to “cool roofs and/or cool walls” In doing so, the Contractor shall develop the standards for the cool walls that include specifying materials that are rated and ASTM tested, for .75 initial reflectance and .55 extended reflectance
- Installing high-efficiency lighting, with an emphasis on super-T-8's such that maximum elimination of incandescent lighting is accomplished per retrofit.

Ensure that work performed in conjunction with this contract conforms with standards at least considered minimally acceptable in the industry and as adapted to the conditions of Guam. That is, the industry standard may need adjustment to provide acceptable results in the Guam climate and conditions; however the performance quality delivered shall be of that considered acceptable in a community with well established delivery of retrofits. The monitoring and grading of a service provider performance may include third-party audits of 10% or more of each contractor's work.

The Professional will calibrate the EPS benchmarking software and tool to the Guam climate region, provide training on the use of the tool, and maintain a rating database and web marketing portal.

Energy Performance Score (EPS) – This energy auditing tool will provide simple easy to understand information to home owners; identify opportunities for efficiency improvements; and encourage voluntary retrofits by providing more information to the real estate market. The EPS will include a whole home performance audit and recommendation report detailing cost-effective improvement options for the home, and will provide a simple numerical score (like a “miles per gallon” rating for houses). The EPS enables homeowners to rate the efficiency of their homes on energy consumption and carbon impact. Homeowners can then compare their EPS scores to those of other homes, take measures to improve their scores, and use the rating as a selling point to potential buyers or renters.

Training – Because the EPS establishes a new auditing standard for existing homes on Guam, there will be training needs. Members of the Guam Contractors Association, building code inspectors, and Guam Power Authority staff will need to be trained to deliver the EPS audits. In addition, the real estate professionals and appraisers are key links to homeowners and will need training and outreach to promote the benefits of the EPS, energy efficiency and sustainability to their clients.

Rating Database, Administration, and Web Portal – The contractor will develop and maintain a database of EPS results and establish a Web portal to link

homeowners (with appropriate security and privacy controls) with energy efficiency contractors and financiers. The web portal will allow homeowners to review and select bids and financing options. The database will also allow homes on the market to list their EPS scores on Guam's Multiple Listing Service (MLS). The database will be located on the Guam Energy Office website and allow the contractor and the Guam Energy Office staff to run reports to determine measure implemented in program administrator will gain by having a accountability mechanism in place. This will allow transparent tracking of the energy and carbon improvements using the EPS benchmarking tool that ultimately will result through investment in such an audit program.

As a separate effort, the Guam Energy Office intends to subsidize 1,000 energy audits for small multi-family and single-family residential customers as a pilot program. The audits will be offered at \$35 and will utilize the EPS tool and resources.

VI. SERVICES OF THE CONTRACTOR

A. Statement of Qualification

Potential Professional Energy Audit candidates to be considered for evaluation must address the following:

1. **Executive Summary** – The Professional's Statement of Qualification (SOQs) shall be preceded by an Executive Summary that provides a comprehensive summary of the submitted proposal.
2. **Description of the Firm** – Provide a brief and general description of the firm which should include service information, location, number of employees, business operation (yrs.), etc.
3. **Firm's Experience** – Provide brief summaries of past energy audits that exhibit the firm's ability/experience to commence the energy audit required. Please provide at least five (5) examples of successful energy audits. Examples may include but are not limited to the following: lighting systems, energy conservation measures, heating/cooling systems, renewable electricity, etc.
4. **Certifications** – Listed governmental, environmental and certifications (professional) attained by the firm. Please provide copies of certifications and can be attached to the proposal as an appendix.
5. **Organization and Management** – Administrative structure of the firm's ability to manage the energy audit services requested. An outlined overview of the firm's areas of expertise and major responsibilities should be included. No resumes need to be included.

Notice:

All material in the aforementioned should be clear and coherently expressed in the proposal.

B. Energy Performance Score Application Review

The Contractor review shall include an assessment of the application and that all forms and supporting materials have been included. Additionally, the submitted application is subject to review by but not limited to the GEPA/GEO and the U.S. Department of Energy.

C. Energy Performance Score Conditions

The Contractor must draft conditions for determined applications to be completed during the contract period. These conditions are to comply with relevant Federal and Guam regulations to which also comply with the Guam Building Code. The Contractor shall also prepare a Statement of Basis for the Energy Performance Score processed and support the GEPA/GEO in preparing a Response to Comments document for submitted comments.

D. Quality Assurance/Quality Control

The Contractor will ascertain a checklist, quality control and assurance for the GEPA/GEO to review and process for the energy audit to commence retrofitting in designated buildings. This checklist will also include additional recommendations subject to review by the GEPA/GEO.

E. Technical Progress Reports

The Contractor shall have monthly progress reports concerning the Energy Performance Score's performance made available. Inclusive of this report shall be information with regards to budget, expenditures, and when necessary, an estimated time of completion.

F. Optional Services & Program Administrator

The Contractor shall provide optional services relating to energy efficiency, this includes attending time-honored meetings for the EPS process and present recommendations and findings to the aid of the GEPA/GEO. To provide quality

assurance during the retrofitting activities and on standby technical support for one (1) year and three (3) months after the retrofitting process had been completed.

The Program Administrator shall:

- Establish contractor qualifications according to **DOE Workforce Guidelines for Home Energy Upgrades - KSA** (knowledge, skills and abilities).
- Coordinate with relevant external workforce education and training efforts to ensure qualified workforce is available.
- Establish an approved list of qualified contractors capable of performing the work according to **DOE Workforce Guidelines for Home Energy Upgrades**.
- Develop/select an assessment protocol and select a DOE best-test approved software capable of providing estimates of energy savings, upon which rebates will be based.
- Provide technical specifications for work performed according to **DOE Workforce Guidelines for Home Energy Upgrades**.
- Develop and administer a rebate program.
- Provide a rigorous quality assurance/ quality control program consistent with Home Performance with Energy STAR and DOE guidance.
- Provide all records in organized electronic format as decided in discussion with the GEPA/GEO for ease in tracking and transparency of program performance.
- Information obtained from measures of improved energy efficiency per dwelling shall be public information.

EVALUATION CRITERIA & SELECTION PROCESS

I. EVALUATION CRITERIA

The Guam EPA/GEO will designate a selection committee appointed by the GEPA/GEO Administrator to administer and conduct the evaluation and selection process. Said committee shall at all times administer and conduct these proceedings together in the presence of each other.

Interviews may be conducted after the evaluation of the proposals. The proposals will be evaluated according to the following criteria, with a maximum score of 100 points:

1. The completeness of the proposal, particularly the service, design, methodology and approach to be followed in performing the services required the Scope of Work, and other requirements in the RFP. (20 points)

2. The qualifications and abilities of the Professional and individual(s) assigned to perform the services and their availability within the specified time frame. (25 points)
3. The Contractor's demonstrated knowledge of the EPS process as reflected by the firm's proposed methodology, design, and approach, as well as technical competence, general experience, and specific experience in providing the required services. (30 points)
4. The record of past performance of the Contractor and the selected individual(s) on similar work. (20 points)
5. The required format has been followed. (5 points)
6. The required forms have been submitted. Any proposal which lacks a Non-Collusion Affidavit (Form D) and a Disclosure Affidavit (Form E) will be considered non-responsive and will not be eligible for further evaluation or consideration.

Proposals will then be re-sealed and held in safe-keeping by one of the administrators until time for evaluation.

II. SELECTION PROCESS

The GEPA/GEO will pre-qualify the top three (3) Contractors through the selection process (Section VII – Evaluation Criteria) no later than 20 working days following the deadline for submission of the proposals. All other Contractors will be notified of their non-selection for the pre-qualification list.

In accordance with Guam's procurement laws and as soon as practicable, the Administrator or his/her designee shall conduct contractual negotiations beginning with the highest-rated Professional (Section I – Evaluation Criteria). Should negotiations be unsuccessful, the GEPA/GEO will notify the Professional and cease negotiations. The GEPA/GEO will then proceed to conduct contractual negotiations with the next Contractor with the highest-rated proposal.

GENERAL TERMS & CONDITIONS

SECTION I. CONTRACT TERM

The term of the Contract Agreement shall commence immediately upon the signing of the Governor of Guam and conclude on March 18, 2013. A Notice to Proceed (NTP) will

immediately follow. Any modifications of the Contract Agreement will be effective only if it is in written agreement by both parties.

SECTION II. ASSIGNMENT OF AGREEMENT

The Contractor may not assign the Contract Agreement, or any sum becoming due to GEPA/GEO under the provisions of the Contract Agreement, without the prior written consent of the GEPA/GEO.

SECTION III. GENERAL COMPLIANCE WITH LAWS

Each Party agrees to comply with applicable provisions of all federal, state, and local laws and ordinances and all orders, rules, and regulations promulgated thereunder and to require all persons retained in conjunction with the performance of the Contract Agreement to do likewise. Such compliance shall be a material obligation of the Contract Agreement.

SECTION IV. ACCESS TO RECORDS AND OTHER REVIEW

The Contractor, including its sub-consultants, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the Contract Agreement, including cost incurred, up to three years from the date of final payment to the Contractor. The Contractor, and any sub-consultants, shall allow access to all such records at all such records at all reasonable times, without prior notice, by the U.S. Department of Energy, the Comptroller General of the U.S., Inspector General, or the Government of Guam, in order to audit, examine, and copy. Each of Contractor's subcontractors specific to the Contract Agreement shall include a provision containing the conditions of this Section.

SECTION V. NON-DISCRIMINATION REQUIREMENTS

The Contractor shall comply with all non-discrimination requirements of the Federal Government and the Government of Guam including, without limitation, Title VI of the civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendment of 1972; and the Age Discrimination Act of 1975; all as may have been amended. In the event that a federal or local court or a federal or local administrative agency makes a finding of religion, national origin, or sex against the Contractor or any of its sub-consultants shall forward a copy to the Federal Office of Civil Rights.

SECTION VI. DRUG-FREE WORK PLACE

The Contractor shall comply with the requirements regarding maintaining a drug-free workplace, as required by the Drug- Free Work Place Act of 1988 and 10 CFR Part 607

SECTION VII. OTHER FEDERAL REQUIREMENTS

The Contractor shall comply with all applicable federal requirements pertinent to the Contract Agreement not expressly mentioned in the Contract Agreement, including without limitation any lobbying and disclosure requirements relative to debarment, suspension, ineligibility and voluntary exclusion.

SECTION VIII. MANDATORY DISPUTE CLAUSE (2 GAR Div . 4 § 9103 (g)).

8.1 GEPA/GEO and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, the Contract Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the GEPA/GEO in writing to issue a final decision within sixty days after receipt of the written request. If GEPA/GEO does not issue a written decision within sixty days after written request for final decision, or within such longer period as may be agreed upon by both parties, the Contractor may proceed as though GEPA/GEO had issued a decision adverse to the Contractor.

8.2 GEPA/GEO shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

8.3 GEPA/GEO decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.

8.4 This subsection applies to appeals of the GEPA/GEO's decision on a dispute. For money owed by or to GEPA/GEO under the Contract Agreement, the Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by the Government or from the date when a decision should have been rendered. For all other claims by or against GEPA/GEO arising under the Contract Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of GEPA/GEO. Appeals to the Office of the Public Auditor must be made within sixty days of the GEPA/GEO's decision or from the date the decision should have been made.

8.5 The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

8.6 The Contractor shall comply with the GEPA/GEO decision and proceed diligently with the performance of the Contract Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the Contract Agreement, except where the Contractor claims a material breach of the Contract Agreement by the GEPA/GEO. However, if the GEPA/GEO determines in writing that continuation of services under the Contract Agreement is essential to the public's health or safety, then

the Contractor shall proceed diligently with performance of the Contract Agreement notwithstanding any claims of material breach by GEPA/GEO.

SECTION IX. CLAIMS AGAINST THE GOVERNMENT:

The Contractor expressly recognizes that the Government Claims Act (Title 5 of the Guam Code Annotated, Chapter 6) applies with respect only to claims of money owed by or to the Contractor against the GEPA/GEO if the claim arises out of or in connection with the Contract Agreement. The Contractor also expressly recognizes that all other claims by the Contractor against the GEPA/GEO are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

SECTION X. CONSENT TO JURISDICTION:

The Contractor hereby expressly consents to the jurisdiction of and the form of the courts of Guam with respect to any and all claims which may arise by reason of the Contract Agreement, except as otherwise may be provided by the Guam Procurement Law. The Contractor waives any and all rights it may otherwise have to consent the same or to proceed in a different jurisdiction or forum.

SECTION XI. GENERAL ETHICAL STANDARDS (2 GAR Div. 4§ 1103 (b))

With respect to the Contract Agreement and any other contract that the Contractor may have, or wish to enter into, with any Government of Guam agency, the Contractor represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Government Procurement Regulations.

SECTION XII. PROHIBITION AGAINST GRATUITIES AND KICKBACKS (2 GAR Div. 4§ 11107 (e))

With respect to the Contract Agreement and any other contract the Contractor may have or wish to enter into with any Government of Guam agency, the Contractor represents that he has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.

SECTION XIII. PROHIBITION AGAINST CONTINGENT FEES (2 GAR Div. 4 § 11108 (h))

The Contractor represents that it has not retained a person or anyone upon an agreement or understanding for a percentage, commission, brokerage, or other contingent arrangement, except for retention of bona fide establishment commercial selling agencies for the purpose of securing business.

SECTION XIV. RESTRICTION ON EMPLOYMENT OF SEX OFFENDERS (5 GCA § 5253))

The Contractor warrants that no person in his employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated regardless of the jurisdiction, in which the conviction was obtained, shall provide services on behalf of the Contractor relative to the Contract Agreement. If any person employed by the Contractor and providing services under the Contract Agreement is convicted subsequent to the parties entering into the Contract Agreement, then the Contractor warrants that it will notify GEPA/GEO of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under the Contract Agreement. If GEPA/GEO is found to be in violation of any provisions of this paragraph, then GEPA/GEO shall give notice to AGENCY to take corrective action. The Contractor shall take corrective action within twenty-four hours of notice from GEPA/GEO, and the Contractor shall notify GEPA/GEO when action has been taken. If GEPA/GEO fails to take corrective steps within twenty-four hours of notice from GEPA/GEO, then GEPA/GEO in its sole discretion may suspend the Contract Agreement temporarily.

SECTION XV. OWNERSHIP OF DOCUMENTS AND EQUIPMENT

All briefs, memoranda and other incidental Contractor work or materials furnished hereunder shall be and remain the intellectual property of the GEPA/GEO, including all publication rights and copyright interests. The GEPA/GEO is entitled to review and access the intellectual property upon request and may utilize the data and information with the appropriate citation reflecting ownership by GEPA/GEO.

SECTION XVI. INDEMNITY

The Contractor and the GEPA/GEO agree that all claims between them and between them jointly and severally and any third party, its agents, employees, contractors, or assigns arising out of the Contract Agreement for negligent or intentional harm to property, death, or personal injury shall be governed by the Government Claims Act as hereinafter amended. Neither institution agrees to indemnify the other for such claims. Nothing in the Contract Agreement is intended as a waiver of sovereign immunity.

SECTION XVII. CHANGES

The Guam EPA/GEO may at any time, by written order and agreement by the Contractor, make any change in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work under the Contract Agreement, or in the time required for this performance, an equitable adjustment shall be made and the Contract Agreement shall be modified in writing accordingly.

SECTION XVIII. NOTIFICATION OF CLAIMS

The Contractor, within thirty (30) days after any claim accrues arising out of or in connection with the services provided herein, shall give written notice to the GEPA/GEO and the Attorney General of Guam of such claim, setting forth in detail all the facts relating hereto and the basis for such claim; and that he/she will not institute any suit or action against the GEPA/GEO in any court or tribunal in any jurisdiction based on any such claim later than one (1) year after such filing. Any action or suit on any claim shall not include any item or matter not specifically mentioned in the proof of claim above specified. It is agreed that if such action or suit is instituted proof by the Contractor of his compliance with the provisions of this paragraph shall be a condition precedent to any recovery; and that this paragraph does not constitute a waiver of any applicable statutes of limitations.

SECTION XIX. TERMINATION

Either of the parties hereto, may, by 30-day written notice to the other, terminate the Contract Agreement in whole or in part at any time, either for convenience or default.

SECTION XX. NON-DISCRIMINATION REQUIREMENTS

The Contractor shall comply with all non-discrimination requirements of the Federal Government and the Government of Guam including, without limitation, Title VI of the civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendment of 1972; and the Age Discrimination Act of 1975; all as may have been amended. In the event that a federal or local court or a federal or local administrative agency makes a finding of religion, national origin, or sex against the Contractor or any of its sub-consultants shall forward a copy to the Federal Office of Civil Rights.

SECTION XXI. OTHER FEDERAL REQUIREMENTS

The Contractor shall comply with all applicable federal requirements pertinent to the Contract Agreement not expressly mentioned in the Contract Agreement, including without limitation any lobbying and disclosure requirements relative to debarment, suspension, ineligibility and voluntary exclusion.

SECTION XXII. CONSENT TO JURISDICTION

The Contractor hereby expressly consents to the jurisdiction of and the form of the courts of Guam with respect to any and all claims which may arise by reason of the Contract Agreement, except as otherwise may be provided by the Guam Procurement Law. The Contractor waives any and all rights it may otherwise have to consent the same or to proceed in a different jurisdiction or forum.

ARRA SPECIAL PROVISIONS

A. Flow Down Requirement

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

B. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

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

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

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public

or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following

Notice as well as referring to the Notice on each page to which the Notice applies: Notice of Restriction on Disclosure and Use of Data The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant. Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

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

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

- gross management of an agency contract or grant relating to covered funds
- a gross waste of covered funds

- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;

- an abuse of authority related to the implementation or use of covered funds; or

- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

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

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

Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section. Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.)

[If the award will have Recovery Act and non-Recovery Act funds, reimbursement costs must be done by receipt of an SF-270, Request for Advance or Reimbursement, through the Automated Clearing House and VIPERS. Include the provision below to require the Recipient to distinguish between the funds.]

G. Request for Reimbursement

Recipients must provide information with its submission of the SF-270, Request for Advance or Reimbursement, to identify the portion of the request that is associated with Recovery Act projects.

H. False Claims Act

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

I. Information in supporting of Recovery Act Reporting

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

J. Availability of Funds

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

[Include next 2 paragraphs if award is to a State Government or an Agency.]

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds Certification by Governor

Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth. Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State. Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the

amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

USDOE SPECIAL TERMS AND CONDITIONS

RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award for guidance.

Alternate 1

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

[Preferred method for nonprofit organizations, State and local governments, and Institutions of Higher Education. Use for awards to for-profit organizations, if advance payments are authorized in accordance with 10 CFR 603.312(b)(2).]

- a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.
- b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disburse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close as is administratively feasible to actual disbursements.
- c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.
- d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

Alternate 2

**PAYMENT PROCEDURES – REIMBURSEMENT THROUGH THE
AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM**

[Alternate method for nonprofit organizations, State and local governments, and Institutions of Higher Education. This is one of two preferred methods of payment for awards to for-profit organizations. The Contracting Officer will specify which method applies in the award document.]

- a. Method of Payment. Payment will be made by reimbursement through the Department of Treasury's ASAP system.
- b. Requesting Reimbursement. Requests for reimbursements must be made through the ASAP system. Your requests for reimbursement should coincide with your normal billing pattern, but not more frequently than every two weeks. Each request must be limited to the amount of disbursements made for the federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.
- c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.
- d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

Alternate 3

**PAYMENT PROCEDURES – REIMBURSEMENT THROUGH THE
AUTOMATED CLEARING HOUSE (ACH) VENDER INQUIRY PAYMENT
ELECTRONIC REPORTINGSYSTEM (VIPERS)**

[Preferred method for ACH payments. This is one of two preferred methods of payment for awards to for-profit organizations. The Contracting Officer will specify which method applies in the award document. Use for awards to other recipients if there are special award conditions that require the reimbursement method of payment]

- a. Method of Payment. Payment will be made by reimbursement through ACH.

b. Requesting Reimbursement. Requests for reimbursements must be made electronically through Department of Energy's Oak Ridge Financial Service Center (ORFSC) VIPERS. To access and use VIPERS, you must enroll at <https://finweb.oro.doe.gov/vipers.htm>. Detailed instructions on how to enroll are provided on the web site.

For non-construction awards, you must submit a Standard Form (SF) 270, "Request for Advance or Reimbursement" at <https://finweb.oro.doe.gov/vipers.htm> and attach a file containing appropriate supporting documentation. The file attachment must show the total federal share claimed on the SF 270, the non-federal share claimed for the billing period if cost sharing is required, and cumulative expenditures to date (both Federal and non-Federal) for each of the following categories: salaries/wages and fringe benefits; equipment; travel; participant/training support costs, if any; other direct costs, including subawards/contracts; and indirect costs. For construction awards, you must submit a SF 271, "Outlay Report and Request for Reimbursement for Construction Programs," through VIPERS.

c. Timing of submittals. Submittal of the SF 270 or SF 271 should coincide with your normal billing pattern, but not more frequently than every two weeks. Requests for reimbursement must be limited to the amount of disbursements made during the billing period for the federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.

d. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.

e. Payments. The DOE approving official will approve the invoice as soon as practicable but not later than 30 days after your request is received, unless the billing is improper. Upon receipt of an invoice payment authorization from the DOE approving official, the ORFSC will disburse payment to you. You may check the status of your payments at the VIPER web site. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) that you filed.

Alternate 4

PAYMENT PROCEDURES - REIMBURSEMENT THROUGH THE AUTOMATED CLEARING HOUSE (ACH)

[Alternate ACH method of payment. May be used if recipient cannot access VIPERS.]

a. Method of Payment. Payment will be made by reimbursement through ACH.

b. **Requesting Reimbursement.** For non-construction awards, you must submit a Standard Form (SF) 270, "Request for Advance or Reimbursement" and appropriate supporting documentation to the address listed below. The supporting documentation must show the total federal share claimed on the SF 270, the non-federal share claimed for the billing period if cost sharing is required, and cumulative expenditures to date (both Federal and non-Federal) for each of the following categories: salaries/wages and fringe benefits; equipment; travel; participant/training support costs, if any; other direct costs, including subawards/contracts; and indirect costs. For construction awards, you must submit a SF 271, "Outlay Report and Request for Reimbursement for Construction Programs," to:

U.S. Department of Energy
Oak Ridge Financial Service Center
P.O. Box (TBD)
Oak Ridge, TN 37831

c. **Timing of submittals.** Submittal of the SF 270 or SF 271 should coincide with your normal billing pattern, but not more frequently than every two weeks. Requests for reimbursement must be limited to the amount of disbursements made during the billing period for the federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.

d. **Adjusting payment requests for available cash.** You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.

e. **Payments.** The DOE approving official will approve the invoice as soon as practicable but not later than 30 days after your request is received, unless the billing is improper. Upon receipt of an invoice payment authorization from the DOE approving official, the DOE Oak Ridge Financial Service Center (ORFSC) will disburse payments to you. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) that you filed.

Alternate 1

COST SHARING

[Applies if cost sharing is required. The Recipient's cost share for each budget period must reflect the overall cost share ratio negotiated by the parties. This ratio must be at least the statutory minimum based on the nature of the project.]

a. Total Estimated Project Cost is the sum of the Government share and Recipient share of the estimated project costs. The Recipient's cost share must come from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award,

you agree that you are liable for your percentage share of total allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion. This cost is shared as follows:

Budget Period No.	Budget Period Start Date	Government Share \$ / %	Recipient Share \$ / %	Total Estimated Cost
1				
2				
3				
Total Project		\$	\$	\$

b. If you discover that you may be unable to provide cost sharing of at least the amount identified in paragraph a of this article, you should immediately provide written notification to the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award indicating whether you will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost sharing will be secured.

c. You must maintain records of all project costs that you claim as cost sharing, including in-kind costs, as well as records of costs to be paid by DOE/NNSA. Such records are subject to audit.

d. Failure to provide the cost sharing required by this Article may result in the subsequent recovery by DOE/NNSA of some or all the funds provided under the award.

[NOTE: Under rare circumstances, DOE may agree to front-load its cost-sharing such that the recipient cost share percentage is below the statutory minimum in early budget periods (or below the overall project cost-share ratio negotiated by the parties) with the expectation that the recipient will catch-up in later budget periods. In such instances the following language should be substituted for the first part of paragraph a:]

a. Total Estimated Project Cost is the sum of the Government share and Recipient share of the estimated project costs. The Recipient's cost share must come from non Federal sources unless otherwise allowed by law. Recipient acknowledges that the Government has agreed to share at a higher rate in the early stages of the project with the expectation that the recipient shall share at a higher rate during later stages in order to achieve an overall recipient cost-share percentage of at least ___*___% of the total allowable project costs. By accepting federal funds under this award, you agree that, notwithstanding the budget period cost-share percentages set forth below, you are liable for ___*___% of the total allowable project costs, even if the project is terminated early or is not funded to

completion. If you have not achieved __*__% cost-sharing at the time of project termination or discontinuance, you shall refund sufficient funds to the Government in order to achieve a Recipient cost-share percentage of __*__% based on total allowable project cost. The cost is shared as follows:

* Note to Contract Specialists: The percentage to be inserted in all the blanks is the same number.

Alternate 2

COST SHARING, WHEN DOE/NNSA FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER (FFRDC) CONTRACTOR PARTICIPATES IN PROJECT AND DOE/NNSA PAYS FFRDC CONTRACTOR'S COSTS DIRECTLY

[Applies if there is cost sharing and a DOE FFRDC contractor participates in the project and DOE pays the FFRDC costs directly]

a. Total Estimated Project Cost is the sum of the Government share, including FFRDC contractor costs, and Recipient share of the estimated project costs. The DOE/NNSA FFRDC contractor cost is not included in the total approved budget for this award, because DOE/NNSA will pay the DOE/NNSA FFRDC contractor portion of the effort under an existing DOE/NNSA contract. The Recipient's cost share must come from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award, you agree that you are liable for your percentage share of allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion. This cost is shared as follows: Government share, including

Budget Period No.	Budget Period Start Date	Government Share, including FFRDC Cost		Recipient Share \$ / %	Total Estimated Cost
		DOE \$ / %	FFRDC \$ / %		
1					
2					
3					
Total		\$	\$	\$	\$
Project					

- b. If you discover that you may be unable to provide cost sharing of at least the amount identified in paragraph a of this article, you should immediately provide written notification to the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award indicating whether you will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost sharing will be secured.
- c. You must maintain records of all project costs that you claim as cost sharing, including in-kind costs, as well as records of costs to be paid by DOE/NNSA. Such records are subject to audit.
- d. Failure to provide the cost sharing required by this Article may result in the subsequent recovery by DOE/NNSA of some or all the funds provided under the award.

[NOTE: Under rare circumstances, DOE may agree to front-load its cost-sharing such that the recipient cost share percentage is below the statutory minimum in early budget periods, (or below the overall project cost-share ratio negotiated by the parties), with the expectation that the recipient will catch-up in later budget periods. In such instances the following language should be substituted for the first part of paragraph a:]

a. Total Estimated Project Cost is the sum of the Government share, including FFRDC contractor costs, and Recipient share of the estimated project costs. The DOE/NNSA FFRDC contractor cost is not included in the total approved budget for this award because DOE/NNSA will pay the DOE/NNSA FFRDC contractor portion of the effort under an existing DOE/NNSA contract. The Recipient's cost share must come from non-Federal sources unless otherwise allowed by law. Recipient acknowledges that the Government has agreed to share at a higher rate in the early stages of the project with the expectation that the recipient shall share at a higher rate during later stages in order to achieve an overall recipient cost-share percentage of at least % of the total allowable project costs. By accepting federal funds under this award, you agree that, notwithstanding the budget period cost-share percentages set forth below, you are liable for % of the total allowable project costs, even if the project is terminated early or is not funded to completion. If you have not achieved % cost-sharing at the time of project termination or discontinuance, you shall refund sufficient funds to the Government in order to achieve a Recipient cost-share percentage of % based on total allowable project cost. The cost is shared as follows:

* Note to Contract Specialists: The percentage to be inserted in all the blanks is the same number

Alternate 1

INCREMENTAL FUNDING AND MAXIMUM OBLIGATION

[Applies if budget period and project period are different.]

If at any time during the award a budget period is funded on an incremental basis, the maximum obligation of the DOE/NNSA is limited to the amount shown in Block 16.b.(3) “ CUMULATIVE DOE OBLIGATIONS Project Period to Date” on the Notice of Financial Assistance Award. You are not obligated to continue performance of the project beyond the total amount shown in Block 16.b.(3) and your pro rata share of the project costs, if cost sharing is required. Subject to the availability of additional funds, DOE anticipates obligating the total amount shown in Block 16.a.(4) for the current budget period.

Alternate 2

INCREMENTAL FUNDING AND MAXIMUM OBLIGATION

[Applies if budget period and project period are coextensive and the award is not fully funded. Note: Program Offices should fund the work to be performed during the current Federal fiscal year and at least the first 3 months of the next fiscal year when the award is made.]

This award is funded on an incremental basis. The maximum obligation of the DOE/NNSA is limited to the amount shown in Block 16.b.(3) “ CUMULATIVE DOE OBLIGATIONS Project Period to Date” on the Notice of Financial Assistance Award. You are not obligated to continue performance of the project beyond the total amount shown in Block 16.b.(3) and your pro rata share of the project costs, if cost sharing is required. Additional funding is contingent upon the availability of appropriated funds and substantial progress towards meeting the objectives of the award.

REBUDGETING AND RECOVERY OF INDIRECT COSTS

a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government’s share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.

b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates (See “Incremental Funding and Maximum Obligation article). DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the under recovery. Such under recovery may be allocated as part of the organization’s required cost sharing.

DIRECT PAYMENT BY DOE/NNSA OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER (FFRDC) CONTRACTOR COST

[Applies if there is no cost sharing and a DOE FFRDC contractor participates in the project and DOE pays the FFRDC costs directly]

For the purposes of this article, Total Estimated Cost of Project (Block 17 on the Notice of Financial Assistance Award) is the sum of the Recipient's costs and the DOE/NNSA FFRDC contractor costs. The DOE/NNSA FFRDC contractor cost is not included in the total approved budget for this award, because DOE/NNSA will pay the DOE/NNSA FFRDC contractor portion of the effort under an existing DOE/NNSA contract. The Total Estimated Cost of Project is as follows:

Budget Period No.	Budget Period Start Date	Recipient Cost \$	DOE/NNSA FFRDC Cost \$	Total Estimated Cost
1				
2				
3				
Total Project		\$	\$	\$

PRE-AWARD COSTS [Applies if the Contracting Officer approves pre-award costs for a period greater than the 90 calendar day period immediately preceding the date of the award.]

You are entitled to reimbursement for costs incurred on or after (insert month, day, year), as authorized by the pre-award costs letter dated (insert date of approval letter), if such costs are allowable in accordance with the applicable Federal cost principles referenced in 10 CFR part 600.

USE OF PROGRAM INCOME [Three alternates. Generally, Alternate 1 applies to awards supporting research and Alternate 3 applies to other discretionary awards.]

Alternate 1 (Addition)

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

Alternate 2 (Cost Sharing)

If you earn program income during the project period as a result of this award, you may use the program income to meet your cost sharing requirement.

Alternate 3 (Deduction)

If you earn program income during the project period as a result of this award, you must deduct the program income from the total allowable project costs to determine the net allowable costs on which the Federal share is based.

STATEMENT OF FEDERAL STEWARDSHIP

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

STATEMENT OF SUBSTANTIAL INVOLVEMENT

[Applies to cooperative agreements only]

[The program announcement may include a Statement of Substantial Involvement that will be included in cooperative agreements awarded under that announcement. If the announcement does not include such a statement, the Contracting Officer and DOE/NNSA Project Director will negotiate a specific Statement of Substantial Involvement for each cooperative agreement prior to award.]

SITE VISITS

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

REPORTING REQUIREMENTS

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

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

PUBLICATIONS (OCT 2004)

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

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

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

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

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

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

[The standard DOE financial assistance intellectual property provisions applicable to the various types of recipients are located at http://www.gc.doe.gov/techtrans/sipp_matrix.html. Click here for provisions.]

- a. The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced in Block 19 of the Notice of Financial Assistance Award.
- b. Questions regarding intellectual property matters should be referred to the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at <http://www.gc.doe.gov/gcmain.html>. Click on Intellectual Property and Laboratory Partnering, and then click on IP Service Providers List.

NATIONAL SECURITY: CLASSIFIABLE RESULTS ORIGINATING UNDER AN AWARD

[Applies if the award is for research]

- a. This award is intended for unclassified, publicly releasable research. You will not be granted access to classified information. DOE/NNSA does not expect that the results of the research project will involve classified information. Under certain circumstances, however, a classification review of information originated under the award may be required. The Department may review research work generated under this award at any time to determine if it requires classification.
- b. Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to the national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If you originate information during the course of this award that you believe requires classification, you must promptly:
 1. Notify the DOE Project Officer identified in Block 11 and the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award;
 2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P.O. Box A; Germantown, MD 20875-0963, for classification review.
 3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 30 days after receipt by the Director, Office of Classification and Information Control

c. If you originate information concerning the production or utilization of special nuclear material (i.e., plutonium, uranium enriched in the isotope 233 or 235, and any other material so determined under section 51 of the Atomic Energy Act) or nuclear energy, you must:

1. Notify the DOE Project Officer identified in Block 11 and the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award.

2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P. O. Box A; Germantown, MD 20875-0963 for classification review within 180 days of the date the recipient first discovers or first has reason to believe that the information is useful in such production or utilization.

3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 90 days after receipt by the Director, Office of Classification and Information Control.

d. If DOE determines any of the information requires classification, you agree that the Government may terminate the award by mutual agreement in accordance with 10 CFR 600.25(d). All material deemed to be classified must be forwarded to the DOE, in a manner specified by DOE.

e. If DOE does not respond within the specified time periods, you are under no further obligation to restrict access to the information.

CONTINUATION APPLICATION AND FUNDING

[Applies to continuing awards]

a. Continuation Application. A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least 90 days before the end of each budget period, you must submit to the DOE Project Officer identified in Block 11 and the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award your continuation application, which includes the following information:

1. A report on your progress towards meeting the objectives of the project, including any significant findings, conclusions, or developments, and an estimate of any unobligated balances remaining at the end of the budget period. If the remaining unobligated balance is estimated to exceed 20 percent of the funds available for the budget period, explain why the excess funds have not been obligated and how they will be used in the next budget period.

2. A detailed budget and supporting justification for the upcoming budget period
if additional funds are requested, a reduction of funds is anticipated, or a budget
for the upcoming budget period was not approved at the time of award
3. A description of your plans for the conduct of the project during the
upcoming
budget period, if there are changes from the DOE approved application.

b. Continuation Funding. Continuation funding is contingent on (1) availability of funds; (2) substantial progress towards meeting the objectives of your approved application; (3) submittal of required reports; or (4) compliance with the terms and conditions of the award.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

[Applies if a NEPA compliance review is required and if it has not been completed prior to award]

You are restricted from taking any action using Federal funds, which would have an adverse affect on the environment or limit the choice of reasonable alternatives prior to DOE/NNSA providing either a NEPA clearance or a final NEPA decision regarding this project. Prohibited actions include, but are not limited to, demolition of existing buildings, site clearing, ground breaking, construction, and/or detailed design. This restriction does not preclude you from *[Insert activities that can be performed before the NEPA clearance or decision is completed]*.

[Add following paragraph to construction awards.]

You must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE/NNSA initiating the NEPA process.

LOBBYING RESTRICTIONS

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

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

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

PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS

[Applicable if the objective of the award is to construct, rehabilitate, alter, convert, extend, or repair buildings, highways, or make other improvements to real property.]

a. Unless in conflict with State or local laws, you must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this agreement, or pursuant to a subaward to this agreement, do not:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or

2. 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).

b. The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

c. Nothing in this provision prohibits bidders, offerors, contractors or subcontractors from voluntarily entering into agreements with labor organizations.

d. To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

I. Nondiscrimination Policies

You must comply with applicable provisions of the following national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;
2. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;
3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C.6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;
4. On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;
5. On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and
6. On the basis of disability in the Architectural Barriers Act of 1968(42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

II. Environmental Policies

You must:

1. Comply with applicable provisions of the Clean Air Act (42 U.S.C.7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.
2. Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:

The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C.

a. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of

1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.

c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.
4. Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

III. Live Organisms

1. **Human research subjects.** You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.
2. **Animals and plants.**
 - a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

- b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication “Guide for the Care and Use of Laboratory Animals”(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).
- c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended (“the Act,” 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1. **Debarment and suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.
2. **Drug-free workplace.** You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).
3. **Lobbying.**
 - a. You must comply with the restrictions on lobbying in 31 U.S.C.1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.
 - b. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).
 - c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly

or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

4. **Officials not to benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.
5. **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.
6. **Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).
7. **Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.
8. **Use of United States-flag vessels.**
 - a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.
 - b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. **Research misconduct.** You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6, 2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.
10. **Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**
- a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:
 - i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or
 - ii. Military recruiters' access to campuses, students on campuses, or information about students.
 - b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:
 - i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
 - ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.
11. **Historic preservation.** You must identify to us any:

- a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].
- b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1,

et seq.).

12. **Relocation and real property acquisition.** You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.
13. **Confidentiality of patient records.** You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.
14. **Constitution Day.** You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

15. Trafficking in Persons

- a. Provisions applicable to a recipient that is a private entity.
 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
 2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity—
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition

in paragraph a.1 of this award term through conduct that is either—

- A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.
- b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.
- c. Provisions applicable to any recipient.
- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - 2. Our right to terminate unilaterally that is described in paragraph a.2 or b. of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

V. National Policy Requirements for Subawards.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV

of this document that apply, based on the type of subawardee organization and situation.

CODE OF FEDERAL REGULATIONS

1. 10 CFR 600.237: SUBGRANTS

(a) States. States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall: (1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; (2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation; (3) Ensure that a provision for compliance with 600.242 is placed in every cost reimbursement subgrant; and (4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) All other grantees. All other grantees shall follow the provisions of this subpart which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall: (1) Ensure that every subgrant includes a provision for compliance with this subpart; (2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and (3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) Exceptions. By their own terms, certain provisions of this subpart do not apply to the award and administration of subgrants: (1) Section 600.210; (2) Section 600.211; (3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in 600.221; and (4) Section 600.250.

[53 FR 8045, 8087, Mar. 11, 1988. Redesignated at 59 FR 53264, Oct. 21, 1994, as amended at 61 FR 7166, Feb. 26, 1996] Reports, Records Retention, and Enforcement

Read more: <http://cfr.vlex.com/vid/600-237-subgrants-19617810#ixzz0xUwqD3YO>

2. 10 CFR 600.7: SMALL AND DISADVANTAGED AND WOMEN

(a) DOE encourages the participation in financial assistance awards of small

businesses, including those owned by socially and economically disadvantaged individuals and women, of historically black colleges, and of colleges and universities with substantial minority enrollments.

(b) For definitions of the terms in paragraph (a) of this section, see the Higher Education Act of 1965, and 15 U.S.C. 644, as amended by the Federal Acquisition Streamlining Act (FASA), and implementing regulations under FASA issued by the Office of Federal Procurement Policy.

(c) When entering into contracts under financial assistance awards, recipients and subrecipients shall comply with the requirements of Section 600.144 or Section 600.236, as applicable.

Read more: <http://cfr.vlex.com/vid/600-disadvantaged-women-participation-19617467#ixzz0xUMXELOr>

APPENDIX A TO PART 600

Socioeconomic Policy Requirements

- Nondiscrimination in Federally Assisted Programs, 10 CFR part 1040 (45 FR 40514, June 13, 1980), as proposed to be amended by 46 FR 49546 (October 6, 1981).
- Nondiscrimination Provisions in Federally Assisted Construction Contracts, Part III of Executive Order 11246 (September 24, 1965), 3 CFR 1964—65 Comp., p. 345.
- Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4581).
- Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1174).
- Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*).
- National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), 40 CFR part 1500, as implemented by (45 FR 20694, March 28, 1980).
- Sec. 306, Clean Air Act, as amended (42 U.S.C. 7606c).
- Sec. 508, Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 *et seq.*); Executive Order 11738, September 12, 1973.
- Title XIV, Public Health Service Act, as amended (42 U.S.C. 300f— *et seq.*).
- Sec. 102(a), Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 87 Stat. 975).
- 10 CFR part 1022, “Protection of Wetlands and Floodplains.”
- Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*).
- Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*) (15 CFR part 930).
- Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).
- Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).
- Sec. 106, National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); Executive Order Electronic Code of Federal Regulations: Page 128 of 130

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=05450643ec9f89fda0181b7439cf2...> 5/21/2010 11593, "Protection and Enhancement of the Cultural Environment," May 13, 1971, 3 CFR 1971 Comp., p. 154; Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469 *et seq.*); Protection of Historic and Cultural Properties, 36 CFR part 800.

- Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 *et seq.*).
- Protection of Human Subjects, 10 CFR part 745.
- Federal Laboratory Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (9 CFR parts 1, 2, and 3).
- Lead-Based Paint Prohibition (42 U.S.C. 4831(b)).
- Sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).
- Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) (46 CFR §381.7).
- International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517).
- Executive Order 12138, "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women's Business Enterprise," (May 18, 1979) 3 CFR 1979 Comp., p. 393.
- Sec. 403(b), Power Plant and Industrial Fuel Use Act of 1978, (42 U.S.C. 8373(b)); Executive Order 12185 (December 17, 1979, 3 CFR 1979 Comp., p. 474).

Administrative and Fiscal Policy Requirements

- The Hatch Act (5 U.S.C. 1501–1508).
- Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, Pub. L. 96–511 (44 U.S.C. 3501 *et seq.*).
- OMB Circular A–111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations—Policies and Procedures.
- Federal Claims Collection Act of 1966, Pub. L. 89–508, 89 Stat. 309 (31 U.S.C. 951 *et seq.*).

- OMB Circular A-88, Coordinating Indirect Cost Rates and Audit at Educational Institutions.
- OMB Circular A-73, Audit of Federal Operations and Programs.
- Single Audit Act of 1984, Pub. L. 98-502.
- OMB Circular A-128, Audits of State and Local Governments.
- [47 FR 44108, Oct. 5, 1982, as amended at 50 FR 42361, Oct. 18, 1985; 51 FR 4297, Feb. 4, 1986]