

CUSTOMER CONTRACT REQUIREMENTS
Low-Cost, High-Energy Density Flywheel Storage Grid Demonstration
CUSTOMER CONTRACT DE-AR0000153

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

1. FAR Clauses The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.227-1 Authorization and Consent Basic (JUL 1995), Alternate I (APR 1984) .

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). A copy of each notice sent to the Government will be sent to Buyer. "Contracting Officer" shall mean "Buyer". This clause applies only if this contract exceeds \$100,000.

2. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

*****Attachments Referenced Below may be obtained from Buyer's Authorized Procurement Representative*****

A. COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW

a. Compliance with Federal, State, and Municipal Law.

You are required to comply with applicable Federal, state, and municipal laws, regulations, and codes for all work performed under this Award. You are required to obtain all necessary Federal, state, and municipal permits, authorizations, and approvals for all work performed under this Award.

b. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

B. INCONSISTENCY WITH FEDERAL LAW

a. Notification Obligations.

If you discover or believe any terms and conditions in this Award may be inconsistent with any Federal laws and regulations, you are required to notify the ARPA-E Contracting Officer (ARPA-E-CO@hq.doe.gov) in writing immediately. You are required to include in your notification: (i) your award number; (ii) the name and contact information (telephone number and email address) for the individual(s) to whom the ARPA-E Contracting Officer should direct any inquiries regarding this matter; and (iii) a detailed description of the basis for the notification.

b. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

C. Requests for Reimbursement by Subcontractors of Seller

Seller's Subcontractors may not submit requests for reimbursement directly to Buyer. Seller is required to submit all requests for reimbursement, including requests originating from Seller's Subcontractors.

D. FEDERAL STEWARDSHIP ACTIVITIES

a. Intent to Exercise Stewardship.

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

b. Stewardship Compliance.

You are required to provide information and documents required or requested by ARPAE and its designee, and provide assistance, support, and access required or requested by ARPA-E and its designee for the purpose of exercising stewardship over the work performed under this Award.

c. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

E. SITE VISITS

Site Visits.

ARPA-E and its designee (e.g., independent auditor) may make site visits at any time to review work performed under this Award, to review management control systems, and to provide technical advice and assistance, as necessary. You are required to provide reasonable access to all facilities and sites, and to provide reasonable resources and assistance requested or required by ARPA-E and its designee for safety, convenience, or other purposes. ARPA-E will provide reasonable advance notice of site visits, and will minimize interference with ongoing work.

b. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

F. REPORTING REQUIREMENTS

a. Reporting Obligations.

You are required to comply with the reporting requirements in Attachment 4 to this Award.

b. Noncompliance with Reporting Obligations.

If you fail to comply with the reporting requirements in Attachment 4 to this Award, Boeing may consider your failure to be material noncompliance with the terms and conditions of this Award.

C. Application to Subrecipients.

You are required to apply these requirements to your Subcontractors. Subcontractors may not submit scientific and technical reports directly to Boeing. Seller is required to submit all scientific and technical reports originating from your Subcontractors to Boeing.

G. PUBLICATIONS

a. Policy on Publication.

ARPA-E encourages you to publish or otherwise make publicly available the results of work performed under this Award.

b. Requirement for Acknowledgment.

Should you publish or otherwise make publicly available the results of work performed under this Award, you are required to include the following acknowledgement and disclaimer.

Acknowledgment: “The information, data, or work presented herein was funded in part by the Advanced Research Projects Agency – Energy (ARPA-E), U.S. Department of Energy, under Award Number DE-AR0000153. Disclaimer: “The information, data, or work presented herein was funded in part 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.”

c. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

H. LOBBYING

a. Lobbying Restrictions.

You are prohibited from using any funds received from ARPA-E to influence or attempt to influence, directly or indirectly, congressional action on any legislative or appropriation matters (see 18 U.S.C. § 1913).

b. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

I. EQUIPMENT PURCHASES

a. 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.

b. Purchase of Equipment.

If you intend to purchase new equipment to perform work under this Award, you are required to purchase equipment made or manufactured in the United States, to the maximum extent practicable.

c. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

J. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

a. NEPA Determination.

The ARPA-E NEPA Compliance Officer has determined that the work described in Attachment 3 to this Award falls within categorical exclusion B3.6 of DOE’s NEPA regulations (10 C.F.R. Part 1021).

b. Notification Obligations.

In the event of any changes or modifications to the work described in Attachment 3 to this Award, you are required to notify the ARPA-E NEPA Compliance Officer (ARPAE-Counsel@hq.doe.gov) in writing immediately. You are required to include in your notification: (i) your award number; (ii) the name and contact information (telephone number and email address) for the individual(s) to whom the ARPA-E Contracting Officer should direct any inquiries regarding this matter; and (iii) a detailed description of the changes or modifications to the work described in Attachment 3 to this Award.

c. Compliance Obligations.

You are required to provide information and documents required or requested by the ARPA-E NEPA Compliance Officer and his

designee, and provide assistance, support, and access required or requested by the ARPA-E NEPA Compliance Officer and his designee for the purpose of compliance with the National Environmental Policy Act and related regulations, policies, and procedures. ARPA-E may deny reimbursement for any failure to comply with these requirements.

d. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

K. IDENTIFICATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE

a. Notification Obligations.

Any Limited Rights Data or Restricted Computer Software that you plan to use to fulfill data delivery requirements of the Award must be identified to the ARPA-E Contracting Officer (ARPA-E-CO@hq.doe.gov). Please note that this data does not include data that you will produce under the Award. Data that is first produced under the Award is treated separately under the Rights in Data clause in Attachment 2 to this Award. This clause covers only those data that you bring into the Award that were privately funded.

If such Limited Rights Data or Restricted Computer Software is necessary to fulfill data delivery requirements under the Award, ARPA-E may include appropriate Alternates to the Rights in Data Clause in Attachment 2 to this Award to obtain delivery of such limited rights data or restricted computer software, marked with appropriate limited rights or restricted rights notices.

b. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

L. AUDITS

a. Audits Generally.

Consistent with Attachment 6 (10 CFR Part 600), ARPA-E and its designee may audit your financial records at any time. ARPA-E will provide reasonable advance notice of its intent to audit your financial records.

ARPA-E may accept audits performed by independent public accountants, as appropriate.

ARPA-E may require a final audit of work performed under this Award. If the audit has not been performed or completed prior to the termination of the Award or the end of the project period, ARPA-E may recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

b. Audit Obligations.

You are required to provide information and documents required or requested by ARPA-E and its designee, and provide assistance, support, and access required or requested by ARPA-E and its designee for the purpose of auditing your financial records and ensuring your compliance with the terms and conditions of this Award.

c. Audits of For-Profit Entities.

ARPA-E and its designee will conduct audits of your financial records in accordance with 10 C.F.R. § 600.316.

d. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

M. PROPERTY

a. Supplies.

Consistent with Attachment 6 (10 CFR Part 600), you take title to any supplies acquired in whole or in part with Federal funds under the Award.

If the total aggregate value of unused supplies is more than \$5,000, you are required to submit an annual inventory of unused supplies to the ARPA-E Contracting Officer. Upon receipt, the inventory will be attached to this Award.

If the total aggregate value of unused supplies is \$5,000 or less at the termination of the Award or the end of the project period, you may retain the unused supplies.

If the total aggregate value of unused supplies is more than \$5,000 at the termination of the Award or the end of the project period, you may continue to use the unused supplies (i) to further the work described in Attachment 3 to this Award, or (ii) for other Federally funded RD&D projects and programs. If you intend to use the unused supplies for purposes other than those described in (i) and (ii) above, you are required to dispose of the unused supplies in accordance with 10 C.F.R. §§ 600.135 (Universities and Nonprofits) and 600.324 (For-Profit Entities), as applicable. Once the total aggregate value of unused supplies is \$5,000 or less, ARPA-E's residual interest in the unused supplies will be extinguished, and you will have no further obligation to ARPA-E with respect to the unused supplies.

You are required to provide any information requested by the ARPA-E Contracting Officer concerning the use, condition, location, and value of unused supplies.

b. Equipment.

Consistent with Attachment 6 (10 CFR Part 600), you take title to any equipment acquired in whole or in part with Federal funds under the Award. You are required to submit an annual inventory of equipment to the ARPA-E Contracting Officer. Upon receipt, the inventory will be attached to this Award.

If the per unit market value of particular equipment is \$5,000 or less at the termination of the Award or the end of the project period, you may retain the equipment.

If the per unit market value of particular equipment is more than \$5,000 at the termination of the Award or the end of the project period, you may continue to use the equipment (i) to further the work described in Attachment 3 to this Award, or (ii) for other Federally funded RD&D projects and programs. If you intend to use the equipment for purposes other than those described in (i) and (ii) above, you are required to dispose of the equipment in accordance with 10 C.F.R. §§ 600.134 (Universities and Nonprofits) and 600.321 (For-Profit Entities), as applicable. Once the total aggregate value of particular equipment is \$5,000 or less, ARPA-E's residual interest in that equipment will be extinguished, and you will have no further obligation to ARPA-E with respect to that equipment.

You are required to provide any information requested by the ARPA-E Contracting Officer concerning the use, condition, location, and value of equipment.

c. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

N. RECORD RETENTION

a. Record Retention Generally.

Consistent with Attachment 6 (10 CFR Part 600), you are required to retain any records relating to this Award for three years after the end of the project period, unless one of the following exceptions applies:

(i) If any litigation, claim, or audit is started before the expiration of the three-year period, you are required to retain the records until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(ii) You are required to retain records for any real property or equipment acquired with Federal funds for three years after final disposition of the real property or equipment.

(iii) You are not required to retain records after the end of the project period if ARPA-E agrees to maintain the records.

Copies of records may be substituted for originals.

b. Access to Records

You are required to provide reasonable access to your records to ARPA-E and its designee, including but not limited to the DOE Inspector General and Comptroller General of the United States, for the purpose of inspections, audits, and investigations. ARPA-E will provide reasonable advance notice of its intent to review your records, and will minimize interference with ongoing work to the maximum extent practicable.

c. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

O. EXPORT CONTROLS

a. Compliance Obligations.

You are required to comply with all U.S. export control laws and regulations in the performance of work under this Award.

b. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

P. FOLLOW-ON FUNDING

a. Notification Obligations.

You are required to notify the ARPA-E Contracting Officer (ARPA-E-CO@hq.doe.gov) in writing immediately upon (i) your receipt of funding from other source(s) (e.g., Federal agencies, for-profit entities) for the substance of the work described in Attachment 3 to this Award, or (ii) your receipt of a notification that you will be receiving funding from other source(s) (e.g., Federal agencies, for-profit entities) for the substance of the work described in Attachment 3 to this Award. Your notification to the ARPA-E Contracting Officer must include (i) the source(s) of funding; (ii) the name and contact information (telephone number and email address) for the individual(s) to whom the ARPA-E Contracting Officer should direct any inquiries regarding this matter; (iii) the amount of funding you are receiving or expect to receive; and (iv) a copy of your application or request for funding to the other source(s).

b. Breach of Notification Obligations.

If you fail to comply with the notification requirements in subclause (a), ARPA-E may consider your failure to be material noncompliance with the terms and conditions of this Award. A finding of material noncompliance may result in the suspension or termination of the award.

c. Application to Subrecipients.

You are required to apply this clause, in its entirety, to your subrecipients.

Q. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (Mar 2009)

Preamble

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

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below. Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and

reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available.

The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

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

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

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

Special Provisions

A. Flow Down Requirement

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

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams.

No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

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

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made

available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate 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 clause thereof containing the data to be protected and mark the first page of the project narrative 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 ALL 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 review and 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. Any disclosure outside the Government shall be made only to a party subject to an appropriate obligation to the Government to protect the confidentiality of the application. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Further, each line or clause on the pages containing patentable ideas, trade secrets, proprietary or confidential commercial or financial information must be specifically identified and marked with a legend similar to the following:

“The following contains proprietary information that The Boeing Company requests not be released to persons outside the Government, except for purposes of review and evaluation.”

Failure to comply with this requirement will result in the waiver of any right to restricted treatment.

Information about this agreement will be published on the Internet and linked to the website <http://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 grand 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, <http://www.Recovery.gov>, for specific requirements of this section and prescribed language for the notices.).

G. Request for Reimbursement

Recipients must provide information with its submission of the SF-270 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 of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support 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.

R. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

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

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

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

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

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

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference. (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in clause (b)(3) and (b)(4) of this section and condition.

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

None

(3) The award official may add other iron, steel, and/or manufactured goods to the list in clause (b)(2) of this section and condition if the Federal Government determines that--

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act . (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with clause (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

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

None

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

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

Designated country --(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or

Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods --(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good --(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Iron, steel, and manufactured goods. (1) The award term and condition described in this section

implements--

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in clauses (b)(3) and (b)(4) of this section.

(3) The requirement in clause (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

None

(4) The award official may add other iron, steel, and manufactured goods to the list in clause (b)(3) of this section if the Federal Government determines that--

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act. (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with clause (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including--

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with clause (b)(4) of this section.

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost
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(dollars)*

Item 1:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

Item 2:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

None

u. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

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

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

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

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

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify

the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.