

# **City of Greensboro**

## **REQUEST FOR PROPOSAL Business Process Management Information Technology Tool April 12, 2011**

**This project is American Recovery and Reinvestment Act funded.  
Respondents are responsible to meet all associated ARRA requirements.**

**Respondents should make every effort to be inclusive of disadvantaged businesses.  
The City encourages prime consultants/contractors to take affirmative steps to provide  
M/WBEs an opportunity to participate on projects whenever they are potential sources of  
goods and services.**

This document should in no way be interpreted as a contract (implicit, explicit, or implied) between The City of Greensboro and any person or entity.

# 1 INTRODUCTION

The purpose of this RFP is to provide THE CITY OF GREENSBORO with an estimate for the work required to create a Business Process Management Information Technology Tool (BPM IT Tool) for a municipal energy efficiency project.

## 1.1 Document Specific Definitions

For purposes of this document, the party to whom the RFP is addressed (as set forth on the cover page to this RFP) shall be referred to as “Supplier” and any materials submitted in response to the RFP shall be referred to as Supplier’s “Proposal.” Any reference to “Solution” shall mean the total combination of products and services offered by Supplier to achieve THE CITY OF GREENSBORO’s defined resource and project requirements set forth in the RFP. Any reference to “Project” shall mean the underlying THE CITY OF GREENSBORO business initiative that encompasses, in whole or in part, the Solution sought by this RFP.

## 1.2 Issuing Organization

This RFP is issued by THE CITY OF GREENSBORO. Please refer all inquiries to:

Steve Randall  
Energy and Sustainability Manager  
Engineering and Inspections  
[stephen.randall@greensboro-nc.gov](mailto:stephen.randall@greensboro-nc.gov)

City of Greensboro  
611 Homeland Ave.  
Greensboro, NC 27405  
ATTN: Steve Randall

## 1.3 Rejection of Responses

THE CITY OF GREENSBORO reserves the right to reject any and all applications received from respondents as a result of this request.

## I-4 Incurring Costs

THE CITY OF GREENSBORO is not liable for any cost or expenses incurred by the Supplier or any other person or entity in the preparation of their applications or proposals (including, without limitation, for attendance at any conferences or meetings related to this RFP).

## 1.5 Addenda to the RFP

If it becomes necessary to revise any part of this RFP, addenda will be posted on the same sites as the original RFP.

**1.6 News Releases**

Supplier will not issue any news releases or other public statements pertaining to this RFP without THE CITY OF GREENSBORO’s prior written approval, and then only in coordination with Steve Randall.

**1.7 Response Date**

In order to be considered for initial review and approval, Proposals must arrive by 4:00 p.m. on May 12, 2011 and at the location specified in this RFP. Proposals received after the deadline time and date for this initial solicitation will not be considered.

**1.8 Proposals**

To be considered, Supplier’s Proposal must be complete and in the format provided in the Appendices to this RFP. In addition, THE CITY OF GREENSBORO will accept no more than a 20 page narrative, 11 point font, excluding attachments, responding to the items contained in the RFP. Applicants will not be given an opportunity to change any part of a Proposal after submission. Proposals submitted electronically must be received by THE CITY OF GREENSBORO at [Stephen.randall@greensboro-nc.gov](mailto:Stephen.randall@greensboro-nc.gov).

**1.9 Restriction of Contact**

From the issue date of this RFP until a determination is made regarding the qualification of respondents, all contacts with THE CITY OF GREENSBORO personnel concerning this RFP must be made through Steve Randall.

**1.10 Organizational Structure**

Organizations interested in being considered as the qualified provider are requested to provide information on their organization’s history, partners, proposed organizational structure, personnel, marketing plan, fees, and previous experience in energy services delivery, financial condition and other information as listed and detailed below.

**2 SUPPLIER GUIDELINES AND ACTIVITIES**

**2.1 RFP Schedule and Selection Process**

The following schedule and due dates may be modified at the discretion of THE CITY OF GREENSBORO at any time. Supplier will be notified of changes to this schedule. All times are stated in Eastern Daylight Savings Time.

Issue RFP	April 12, 2011
RFP Questions Deadline	May 2, 2011 4:00pm EDT
RFP Due Date	May 12, 2011 4:00pm EDT

THE CITY OF GREENSBORO shall be entitled to modify any aspect of this RFP (including, without limitation, the requirements set forth herein for Proposals and the schedule for the Project set forth above) from time to time. Proposals not in compliance with this RFP as amended by THE CITY OF GREENSBORO will not be considered.

Proposals submitted pursuant to this RFP shall be deemed offers by the submitting Supplier, and will be irrevocable by the submitting Supplier for one hundred twenty (120) days following the RFP Response Due Date.

Nothing in this RFP shall require THE CITY OF GREENSBORO to accept any Proposal. THE CITY OF GREENSBORO shall be entitled to modify or discontinue the Project at any time.

### **3 SPECIFICATIONS AND REQUIREMENTS**

#### **3.1 Scope**

In order for THE CITY OF GREENSBORO to effectively support the project, it needs a web-based Business Process Management Information Technology Tool (BPM IT Tool), which will streamline the interactions and transactions between customers, contractors, vendors, utilities, and staff. This software tool will serve as the information backbone of the project.

Given that THE CITY OF GREENSBORO will add and remove campaigns, that partners will come and go, that technology may change and algorithms may be refined over the years, it is important that the software is flexible as well as functional and that THE CITY OF GREENSBORO is able to revise business rules without having to engage in a large-scale rewrite of code. The multi-user database we will develop and populate should be scalable, secure, and capable of capturing information from other online sources, as well as from user input.

As a web-based tool, this database will be accessed by customers, contractors, stakeholder partners, and program implementers. It must provide an e-commerce platform for customer-members and an accurate energy auditing and modeling user interface for contractors. It must push products and services to clients and provide a means for measurement and verification for THE CITY OF GREENSBORO staff. It must facilitate social networking and behavioral change on energy use and keep track of carbon mitigated, money spent, project fees owed and much more.

The system will be required to link with the web based systems of different utilities. However, there are no legacy systems requirements to which the new BPM IT Tool must fit. **It is important that the system presented to THE CITY OF GREENSBORO be**

**constructed to interface directly with the data collection and reporting tools being developed by DOE for the Better Buildings Program.**

## **3.2 Specifications and Requirements**

The specifications and requirements for this Project are broken down by user. While the tool will be web-based, THE CITY OF GREENSBORO wants the ability to use it on a local machine not connected to the internet, albeit some functionalities may be unavailable in that instance. THE CITY OF GREENSBORO's database will be securely stored in the cloud/remotely, but contractors and customers should also have the option of saving their data to their hard drives.

### **3.2.1 Customer-Member User**

The BPM IT Tool should be able to provide the following for homes and businesses, although the user interface will be different for residential and commercial customers:

1. Uniquely identified and password protected data
2. For residents, customizable skin based on user interest or group affiliation
3. Capture and store **historical and post-construction** utility data from utility companies once permission given from user (gas, electric, and water)
4. Able to capture smart-meter or other wireless/internet data linked to home or commercial energy management systems
5. Pre-populate data fields based on assessor, MLS, and census data
6. Online energy and water audit and report
7. Configurable online energy use behavior survey and report (can be for household or business)
8. Appointment scheduling for different kinds of audits
9. Set user defined goals for energy, water, or money savings and create plan "with" user for achieving those goals. Suggestions for reaching goals tied to behavioral and audit data – includes DIY, product and service push from THE CITY OF GREENSBORO partners.
10. Set user defined social group for savings (school, neighborhood, peer group) – benchmark compared to local and national data (EPA's Home Energy Yardstick or Portfolio Manager). Success in meeting goals for energy-water use portrayed over time – can be linked to user defined groups as well
11. Ranking or leaderboard display compared to user defined group
12. E-commerce enabled interface for purchasing suggested or chosen products (including membership)
13. Access to uploaded energy auditor diagnostic audit report (if exists)
14. Customer satisfaction survey post-retrofit
15. Application for loan or grant programs and credit card (financing)
16. Carbon calculator
17. Renewable energy calculator
18. Cool roof calculator (new tool soon to be released by DOE)

19. Targeted information (video, podcast, discussion group, webpages) based upon user defined interests and data input on home

### **3.2.2 Contractor User**

1. Appointment scheduler that includes a mapping function
2. Printable forms for clipboard and diagnostic audits
3. Pre-populated online forms with scripted question tree accessible by a handheld device
4. For residential, energy modeling component Best Text EX approved (DOE); includes utility disaggregating tool and weather normalized benchmarking
5. Data intake forms are customizable, based on best practice standards from BPI and/or RESNET, and include environmental hazard (lead paint, asbestos) and water audit questions
6. For residential, report generation including ROI and percent efficiency gain potential. Customizable report (text and photos). One click link to email to client.
7. For commercial, report generation including ROI and percent efficiency gain potential, but note this audit will be clipboard style (somewhere between an AHSRAE level 1 and 2 audit) and linked primarily to lighting, lighting controls, baseload, and water use.
8. Reporting tool for workscope, test out data, and estimates – data saved automatically upon exit and tasks assigned based upon input (i.e., THE CITY OF GREENSBORO alerted when test out data is input, when contractor selected from Retrofit Project Exchange to do the work, etc.)
9. Ability to pay associated account fees online
10. Ability to access community data in the aggregate
11. Tracking metrics for company's work within the program
12. E-commerce enabled for purchasing products
13. Marketing toolkit or advertising services
14. Discussion group
15. Workforce development section – provides for training videos, information on certifications and classes, etc.

### **3.2.3 Program/Staff User – Aggregated for Data from all users**

1. Appointment scheduler for QA with contractor (includes mapping function)
2. Project/customer tracking from intake to completion to M&V
3. Marketing support – customer click through and response, generation of campaigns based on address, age of home, kind of equipment, etc. Ability to track campaigns by audience target, conversion rate, media channels, and cost. Ability to generate direct mail/email copy and address labels for printing or distribution lists for emailing.
4. Contractor tracking – enrollment, trainings and certifications, M&V on work performed

5. Phone app or other program that supports GIS mapping for door-to-door volunteer efforts. Information collected from these surveys uploads to program database.
6. Configurable rebate and incentive processing for automatic issuing and approval
7. Activity and contractor tracking – tracks events and transactions between clients and contractors
8. Configurable task management – events trigger specific tasks which are automatically relayed to appropriate persons (e.g., customer schedules an audit appointment email alert is sent to program administrator and contractor and appointment posted to calendar)
9. Configurable import routines for bringing external data into the system
10. Configurable organizational/program performance metrics, *including the ability to create or revise them based upon EECBG (Federal grant) requirements*
11. Modules to allow a variety of methods to gather utility data from both investor owned utilities, municipal utilities, and cooperative utilities
12. System interface directly with the data collection and reporting tools being developed by DOE for the Better Buildings Program
13. Standard monthly reporting metrics from cities participating in THE CITY OF GREENSBORO's Better Buildings program.

### **3.3 Training Requirements**

Members of THE CITY OF GREENSBORO staff must be trained on all aspects of the BPM IT Tool, and participating THE CITY OF GREENSBORO contractors trained on the energy modeling and reporting component. Please describe how you would work with THE CITY OF GREENSBORO to train contractors and staff on the BPM IT Tool. If there will be ongoing training for new users or applications, please cite costs.

### **3.4 Service Requirements**

It is anticipated that during and after the beta phase implementation of the BPM IT Tool, the Supplier will be available to answer questions and correct issues promptly until all functionalities operate independently and without issue. Costs for upgrades or additions to the system should be described.

### **3.5 Required Incorporation of THE CITY OF GREENSBORO Inputs**

The Solution must include data intake forms for residential and commercial audits, boilerplate text and graphics (*e.g.*, for reports, logo and graphics look-and-feel for the website) provided to the Supplier by THE CITY OF GREENSBORO or, with THE CITY OF GREENSBORO's approval, by relevant utility and lender partners as needed.

## **4 SUPPLIER RESPONSE**

Proposals should include the sections outlined below; the numbering should be identical to the sections outlined below. Except where specifically requested, the Proposal shall be contained within a single document no more than 20 pages, 11 point font, excluding attachments.

#### **4.1 Contact Information**

Responding Company Information:

Company Name	Primary Contact
Address	City
ZIP Code	Email
Phone Number	Fax Number

#### **4.2 Solution Design**

##### **4.2.1 Competitive Landscape**

- Please describe the benefits you believe are unique to your firm. Why should THE CITY OF GREENSBORO choose your firm over another? Please be very specific.
- What do you believe are your firm’s strengths? What do you believe are the challenges you face?

##### **4.2.2 Project Management**

- Describe your approach to project management including roles proposed in the Solution model.
- Describe what project management role(s) THE CITY OF GREENSBORO plays in the overall Solution model and how THE CITY OF GREENSBORO’s role(s) will interact with the Supplier roles.

##### **4.2.3 Quality and Testing**

- Describe your proposed quality assurance (“QA”) processes, including tools used and how you will measure quality and best practices.
- Describe your approach, process, and procedures for software testing and user acceptance testing.

##### **4.2.4 Roles and Responsibilities Matrix**

Based on your understanding of the Project requirements define THE CITY OF GREENSBORO and the Supplier responsibilities, tasks, communication channels, reporting structures, and work-transition protocols. Provide a CITY OF GREENSBORO and Supplier Roles and Responsibilities Matrix that outlines ownership for all of the major activities including direct operational activities, project management, and governance.



#### **4.2.5 Development Approach, Methodology and Tools**

- Please provide a detailed overview of your project approach and methodology. Please include specifics on phases, deliverables, resources and duration. Indicate any specific templates, aids, or other project tools that you would utilize. Provide an implementation plan with supporting organization chart and roles and responsibilities.
- Describe your company's methodology and tools that will help ensure success of the Project.
- Describe your proposed implementation plans, including project phases, milestones, major deliverables and timelines.
- Describe the project management tools that will be used including scheduling, cost control and budget management, resource allocation, collaboration software, communication, quality management and documentation.

#### **4.2.6 Unique Approach**

Please describe what aspects to the approach described above are unique to your firm.

#### **4.2.7 Training**

Describe how training and knowledge transfer will be accomplished for the Project. Indicate how many days of training you anticipate, availability of training locations (including availability of on-site training at THE CITY OF GREENSBORO's premises), and prices for training sessions (e.g., per session, per person, or another basis).

#### **4.2.8 Approach to Design and Roadmap**

How would you approach technology design and roadmap development?

#### **4.2.9 Connectivity and Security**

- Describe how you propose to enable connectivity and manage data security risk.
- Describe how the model proposed utilizes internal and external network environments. Detail the hardware and software requirements and who will be responsible for their cost. Specifically include the link to utilities in this analysis.
- Describe your network management, monitoring, and alerting capabilities and approach to ensure security of assets and networks. Describe use of firewalls and identify any security tools/software implemented.
- Provide details regarding your most recent security assessment of your environment performed by a recognized third party.
- Describe your approach to information security including but not limited to incident identification, escalation, client involvement, breach stoppage, remediation, and reporting.

#### **4.2.10 Key Performance Indicators (“KPIs”)**

- Identify all KPIs you think relevant for this Project. Based on the KPIs outlined, confirm your ability to meet these key performance indicators.
- Please describe the process and tools you will use for measuring, monitoring, tracking and reporting KPIs, including specific reports and/or formats.
- Demonstrate how you will accept risk and liability in service performance.

### **4.3 Project Organization, Resources, and Staffing**

#### **4.3.1 Proposed Organization and Staffing**

Provide a proposed resource plan. The model should include:

- The proposed organization chart including both THE CITY OF GREENSBORO and Supplier roles
- A listing of roles and responsibilities with details of relevant experience.
- A completed proposed staffing model
- Completion of Appendix 3, Personnel Information (mandatory)

#### **4.3.2 Staffing Flexibility**

- Describe your company’s ability to quickly ramp-up additional resources in response to peak demands or incremental project work.
- Describe your subcontracting approach and model for partnering with niche suppliers on this project.

### **4.4 Risks**

Describe the risks and challenges you envision for this particular Project. Describe approaches used in mitigating risks and for risk management in general.

Explain how you will mitigate the risk of having a third party supplier or other providers providing services.

Describe the methodology used to measure risk, circumstances under which it is employed and example artifacts/documentation sufficient to understand the model.

### **4.5 Pricing**

Use attached Appendix 1 to provide the pricing for your products and services. The RFP response is required to include detailed pricing. The Supplier is invited to propose an

alternative pricing model thought to offer advantages to THE CITY OF GREENSBORO. If this alternative model is provided, please describe calculation methodology as well as the benefits this model affords THE CITY OF GREENSBORO.

#### **4.5.1 Specific Elements of Pricing**

Describe and explain the pricing terms for your products and services, including any maintenance fees, support fees, training fees and any other miscellaneous expenses. For professional services fees, include your current rate card.

#### **4.5.2 Firm Pricing**

The prices quoted shall be valid and binding offers by the submitting Supplier and not subject to change for a period of one hundred twenty (120) days following the RFP Response Due Date. Each proposal shall provide the most detailed price breakdown possible vis-à-vis the nature of the Project, your proposed solution for the Project, and your plan for completion of the Project.

#### **4.5.3 All-Inclusive Pricing**

Proposal pricing shall be inclusive of all charges relating to the Project, such as supplies, postage, shipping charges, charges to equipment, utilities, telecommunications, environment and space charges, updates, tools, taxes, travel and out-of-pocket expenses.

#### **4.5.4 Delivery and Payment Schedules**

Provide a schedule of estimated completion dates for specific tasks and milestones for the Project and a breakdown of product and/or services costs.

### **4.6 Value-Adds / Additional Incentives**

If applicable, provide Value-Adds / Additional Incentives that offer significant savings or value beyond the solution proposed in direct response to the requirements/limitations of this RFP.

EXAMPLES: Service Credits  
Training Credits  
Project Manager at no cost  
Online Knowledgebase provided for customers or contractors  
Support for sharing program information between administrators  
Program consulting on BPM IT Tool integration

### **4.7 Alternative Response**

If applicable, provide alternate solution models that offer significant cost savings or process improvements beyond the solution proposed in direct response to the

requirements/limitations of this RFP. Elaborate how any particular levers (KPIs, outlined requirements, etc.) may be modified in support of this alternate solution.

#### **4.8 Assumptions**

Provide all assumptions that are related to the Proposal not already included as a pricing assumption in the pricing model.

#### **4.9 Company Overview**

Please provide the following information regarding your company:

1. Company structure/organizational model
2. Financial overview with focus on proof of financial stability
3. Relevant certification

Provide any relevant information on how your company's structure will support this Project for THE CITY OF GREENSBORO and demonstrate how your company's values, approach, and style will align culturally with THE CITY OF GREENSBORO.

#### **4.10 Credentials**

##### **4.10.1 Overall Experience and References**

Describe your company's current or previous experiences (no more than 3) in implementing energy efficiency information technology projects which have direct similarities to this request. Please provide a description of the project, a list of services provided. If THE CITY OF GREENSBORO wants to discuss these projects with the references, THE CITY OF GREENSBORO will ask Supplier to set up the meeting.

Explain how previous organization or staff experience will benefit the implementation of this Project.

##### **4.10.2 Bankruptcy, Pending Judgments, Lawsuits**

Describe your company's current legal and financial situation.

- Has your company ever filed for bankruptcy?
  - If you answered Yes to the previous question, please explain when and current status.
- Are there any claims, judgments, arbitrations, investigations or lawsuits pending against your company?

- If you answered YES to the previous question, please explain by describing those that are material (all claims for intellectual property infringement and customer claims and claims in excess of \$200,000 are deemed material), and generally identify those claims that are non-material.
- Provide your Dun & Bradstreet Current Financial Strength Rating. (Example 5A-1 to HH-4)

#### **4.10.3 Certificate of Insurance**

You must provide a Certificate or Certificates of Insurance that describes the insurance coverage you presently carry (*e.g.*, General Liability, Automobile Liability, Worker’s Compensation, and Professional Liability), including the Limits of Insurance afforded under each insurance policy.

## **5 HOW TO RESPOND TO THE RFP**

### **5.1 Detailed RFP Questions – Supplier Worksheet**

Included as Appendix 2 of this RFP is a worksheet titled “Supplier Worksheet” that has been designed to elicit important information about your firm and its products and services. You must respond to every question posed in this Supplier Worksheet.

#### **5.1.1 Preserve Numbering and Format**

You must not change the requirement numbering or insert/delete rows or columns in the Supplier Worksheet.

#### **5.1.2 Status and Supplier Comments**

The questions are arranged in tabular form, and space is provided for you to identify your product status, response, provide explanatory comments, and to reference sources of relevant information (*e.g.*, software documentation).

#### **5.1.3 Status**

In the “Status” column, you must respond with one of the following:

- 3** Requirement completely met by *existing* base software; no modification, additions or workarounds required; vendor can demonstrate functionality if requested to do so
- 2** Requirement partially met; workarounds or code modifications to base software required
- 1** Requirement will be met by next version release of software and on roadmap for development

**0** Requirement not met and not on roadmap for development

#### **5.1.4 Status Explanation**

In the “Response” column, provide an explanation of the basis for your status response. For any response of “1” (requirement met in future release) or “2” (requirement partially met), you should include timeline for future release and/or when code modifications will be required, you should state so explicitly and describe the nature and extent of modification required and if applicable, expected additional costs.

#### **5.2 Questions about This RFP and Follow-Up**

A single point of contact has been established for all pre-proposal questions and follow-up relating to this RFP. You should direct all questions and your final response submission to Dan Curry.

#### **5.3 Due Date**

An electronic copy of your proposal must be returned by 4:00 PM EDT) on May 12, 2011. All correspondence should be addressed to:

Steve Randall  
Energy and Sustainability Manager  
Engineering and Inspections  
City of Greensboro  
611 Homeland Ave  
Greensboro, NC 27405

Electronic submission: [Stephen.randall@greensboro-nc.gov](mailto:Stephen.randall@greensboro-nc.gov)

## **APPENDIX 1**

### **Pricing Chart**

**RATE STRUCTURE:** Detail available options

**HARDWARE NEEDS:** Detail equipment needs and prices

**UPGRADES:** Pricing on any required or optional upgrades

**TRAINING COSTS:** Detail various levels and prices

**SUPPORT:** Detail various levels and prices

**CONSULTANTS:** Hourly rates

**OTHER:**

## APPENDIX 2

### Supplier Worksheet

#### Status

In the “Status” column, you must respond with one of the following:

- 3 Requirement completely met by *existing* base software; no modification, additions or workarounds required; vendor can demonstrate functionality if requested
- 2 Requirement partially met; workarounds or code modifications to base software required
- 1 Requirement will be met by next version release of software and on roadmap for development
- 0 Requirement not met and not on roadmap for development

#### Status Explanation

For each item below insert a “Status Explanation” of the basis for your status response. For any response of “1” (requirement met in future release) or “2” (requirement partially met), you should include timeline for future release and/or when code modifications will be required, you should state so explicitly and describe the nature and extent of modification required and if applicable, expected additional costs.

#### **I. Functionality** **Status**

- 1. Remote Data Storage

Explanation:

- 2. Ability to install and run software on local machine

Explanation:

#### **II. Customer-Member User (Detailed Description Section 3.2.1)** **Status**

- 1. Uniquely identified and password protected data

Explanation:

- 2. Customizable skin based on user interest or group

Explanation:



**II. Customer-Member User (Continued)** **Status**

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3. Automatically capture and store utility data

Explanation:

4. Able to capture smart-meter data

Explanation:

5. Pre-populate data fields

Explanation:

6. Online energy and water audit and report

Explanation:

7. Online energy use behavior survey and report

Explanation:

8. Appointment scheduling for different kinds of audits

Explanation:

9. Set user defined goals for savings

Explanation:

10. Set user defined social group for savings

Explanation:

11. Ranking or leaderboard display

Explanation:

12. E-commerce enabled interface

Explanation:

13. Access to uploaded energy auditor report

Explanation:

**II. Customer-Member User (Continued)** **Status**

14. Customer satisfaction survey post-retrofit

Explanation:

15. Application for loan or grant programs

Explanation:

16. Carbon calculator

Explanation:

17. Renewable energy calculator

Explanation:

18. Cool roof calculator N/A

19. Targeted information based upon user interests

Explanation:

**III. Contractor User (Detailed Description Section 3.2.2)** **Status**

1. Appointment scheduler with mapping

Explanation:

2. Printable forms and diagnostic audits

Explanation:

3. Pre-populated online forms

Explanation:

4. Residential energy modeling

Explanation:

5. Customizable data intake forms (BPI and/or RESNET)

Explanation:

**III. Contractor User (continued)**

**Status**

6. Customizable reports with text and photos

Explanation:

- 7a. Commercial audit based on ASHRAE

Explanation:

- 7b. Commercial report linked to Portfolio Manager

Explanation:

8. Reporting tool for workscope

Explanation:

9. Ability to pay associated account fees online

Explanation:

10. Ability to access community data in the aggregate

Explanation:

11. Tracking metrics for company's work

Explanation:

12. E-commerce enabled for purchasing products

Explanation:

13. Marketing toolkit or advertising services

Explanation:

14. Discussion group

Explanation:

- 15a. Curriculum for training

Explanation:

**III. Contractor User (continued) Status**

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- 15b. Tracking of contractor certifications

Explanation:

**IV. Program Staff User (Detailed Description Section 3.2.3) Status**

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- 1. Appointment scheduler with mapping function

Explanation:

- 2. Project/customer tracking

Explanation:

- 3. Marketing support

Explanation:

- 4. Contractor tracking

Explanation:

- 5. GIS application that supports volunteer efforts

Explanation:

- 6. Rebate and incentive processing

Explanation:

- 7. Activity and contractor tracking

Explanation:

- 8. Configurable task management

Explanation:

- 9. Configurable import routines

Explanation:

**IV. Program Staff User (continued)**

**Status**

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10. Configurable performance metrics

Explanation:

11. Variety of methods to gather utility data

Explanation:

12. System interface directly with the DOE data collection

Explanation:

13. Standard monthly reporting metrics

Explanation:

## **APPENDIX 3**

### **Personnel Information**

Briefly describe the relevant experience, qualifications, and educational background for only the those primary team members (no more than 5) who will directly be working on this project. Identify the person responsible for contract negotiations. Use the following format.

Name:

Current Job Title:

Job Responsibilities:

Number of years with organization:

Primary office location:

Educational Background - List all academic degrees and professional certifications

Identify the primary responsibility of this individual on all IT development projects in the past 5 years.

Describe the role and responsibility of this individual for the duration of this project.

Describe any other relevant technical experience of this individual.

**STANDARD FEDERAL TERMS AND CONDITIONS**  
**UNITED STATES DEPARTMENT OF ENERGY**  
**ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM**

**INTRODUCTION**

These Terms and Conditions are standard requirements for grant awards under the United States Department of Energy's ("DOE") Energy Efficiency and Conservation Block Grant ("EECBG") Program. The DOE may impose additional special conditions in this grant Agreement that address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence. All work and/or expenditure of funds must occur within the approved term of this Agreement. The City of Greensboro ("City") cannot authorize any payments until all parties sign this Agreement.

**SEC.1. FEDERAL PROVISIONS INCORPORATED BY REFERENCE**

The following Office of Management and Budget (OMB) Circulars and federal laws, regulations, and guidelines are incorporated by reference as part of this Agreement. OMB Circulars may be accessed on the OMB web site at [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html) or by calling the Office of Administration, Publications Office, at (202) 395-7332. Federal regulations may be accessed at <ftp://ecfr.gpoaccess.gov>. The Contractor must include in its subcontracts or subawards the provisions below that apply to the particular organization concerned.

- a. 42 United States Code (USC) Sections 17151 — 17158
- b. Title 10 Code of Federal Regulations (CFR) Part 600: Department of Energy (DOE) Financial Assistance Regulations
- c. Energy Efficiency and Conservation Block Grant Funding Opportunity Announcement DE-FOA-0000013, CDFA Number 81.128  
[\(https://www.fedconnect.net/FedConnect/\)](https://www.fedconnect.net/FedConnect/)

- d. OMB Circular A-102: Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- e. OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- f. OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations



## **SEC. 2. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

The Contractor will obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this contract.

## **SEC. 3. 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 for guidance.

## **SEC. 4. FUNDING LIMITATIONS**

Any federal, State, and local laws and regulations applicable to this contract that is not expressly listed in this Agreement are incorporated herein as part of this Agreement.

The funding source(s) and applicable restriction(s) identified below apply to this contract:

- a. Funding for this Agreement is dependent upon a federal grant agreement, which is scheduled to terminate on August 2, 2012. Funding for this Agreement is subject to the approval of the applicable Federal Government agency, federal law, federal court judgments, and/or federal agency orders that may affect the provisions or terms of this Agreement.
- b. Energy Efficiency and Conservation Block Grant (EECBG) funding for this Agreement is approved as part of the EECBG grant. Grant funds may be used only for eligible activities as provided in 42 U.S.C. Section 17154(3)(13) and as approved in the Block Grant Guidelines.
- c. Grant funds may not be used to supplant (i.e., take the place of) previously budgeted funds for this project, whether Recipient funds or funding from other

grants. This includes budgeting for staff, contractors, or supplies. Funds may be used to supplement an existing budget.

- d. No EECBG grant funds may be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.
- e. Local governments (i.e., the City) may not use more than twenty percent (20%) of the grant funds awarded or \$250,000 whichever is greater (EISA Sec 545(b)(3)(B)), for the establishment of revolving loan funds.
- f. Local governments (i.e., the City) may not use more than twenty percent (20%) of the grant funds awarded or \$250,000, whichever is greater (EISA Sec 545(b)(3)(C)), for subgrants to nongovernmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government.

## **SEC. 5. USE OF PROGRAM INCOME**

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

## **SEC. 6. CEILING ON ADMINISTRATIVE COSTS**

Contractors are expected to manager their administrative costs. Neither the City nor DOE will amend this contract solely to provide additional funds for changes in administrative costs. The Contractor shall not be reimbursed in this contract for any administrative costs in excess of ten percent (10%) of the amount of the contract.

## **SEC. 7. SUBGRANTS AND LOANS**

The Contractor hereby warrants that it will ensure that all activities by any of its subcontractors to accomplish the approved Project Description or Statement of Project Objectives are eligible activities under 42 U.S.C. 171534(1)-13.

Upon the Contractor's selection of the subcontractor, the Contractor shall notify the City's Project Manager with the following information for each, regardless of dollar amount:

- Name of Subcontractor
- DUNS Number
- Subcontract amount
- Statement of work including applicable activities

## **SEC. 8. CONTRACTING AND PROCUREMENT PROCEDURES**

### **A. General Requirements All Subcontracts**

The Contractor will ensure that any subcontractors it hires pursuant to this Agreement are paid in compliance with federal and state prevailing wage laws in accordance with the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act and the North Carolina Wage and Hour Act. When advertising for a subcontracting opportunity under this contract, the Contractor will attach the applicable wage determinations to the advertisement, solicitation, and resulting subcontract. The Contractor will be liable and responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this contract.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline. The budget must include an itemized list of expenses, including, where applicable, detailed descriptions of all administrative costs, overhead, travel, materials and supplies, equipment, and contract labor.
- Provisions that ensure compliance with federal and state prevailing wage laws.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

- Provisions for termination by the Contractor, including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- Any additional requirements specified in the federal provisions incorporated by reference on pages 2-3 of this Agreement.
- The provisions required by 10 Code of Federal Regulations (CFR) Section 600.236(i).
- The "Retention of Records" provisions specified in this Agreement.
- Audit provisions specified in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.
- Language conforming to the "License" provision in this Agreement.
- National Policy Assurances, where applicable.
- Language conforming to the "Lobbying Activities" provision in this Agreement.
- All provisions in Section 25 of this Agreement, "Additional Requirements for Federally-Funded Grants."

B. Specific Requirement to Submit Subcontract Documentation

Within 30 days or less after execution of any subcontract for services or products under this contract, the Contractor must submit to the City's Project Manager a copy of the following support documentation:

- The complete, finally executed subcontract, and
- The applicable wage determinations for any and all labor and mechanic work, to be performed under the subcontract.

The City must approve the applicable wage determinations prior to the commencement of any work under such a subcontract. The City's approval and execution of this contract does

not constitute the City's approval of any prevailing wage rates identified by the Contractor on Exhibit B to this contract. The DOE's review of prevailing wage determinations will occur after an EECBG Program Grant Award has been approved and executed and the City has submitted this documentation. Installation costs incurred prior to the DOE's approval of such documentation are not reimbursable under this Agreement and will be disallowed. The Contractor must include these requirements in all subcontracts.

These requirements apply to all subcontracts for services to achieve the objectives of this contract, including subcontracts paid for entirely with cost share funds.

### C. Requirement to Maintain Subcontract Documentation

In addition to submitting the specific documentation identified in subsection (B) above, the Contractor must maintain the following documentation and provide them promptly upon request by the City's Project Manager:

- all solicitations for services or products required to carry out the terms of this contract;
- copies of the proposals or bids received;
- if applicable, justification and cost analysis for noncompetitive proposals in accordance with 10 CFR 600.236(d)(4) specifying why competitive procurement was infeasible and which of the following circumstances applies:
  - ❖ The item is available only from a single source;
  - ❖ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - ❖ DOE authorizes noncompetitive proposals; or
  - ❖ After solicitation of a number of sources, competition is determined inadequate.
- copies of subcontracts executed.

D. Additions, Removal or Substitutions of Subcontractors

The City reserves the right to replace a subcontractor, request additional subcontractors, and approve replacement or additional subcontractors requested by the Contractor. Failure to comply with the requirements of this Section may result in the termination of this contract.

**SEC. 9. REPORTING REQUIREMENTS**

The reporting requirements for this contract are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2 attached hereto as Exhibit A. Failure to comply with these reporting requirements is considered a material breach of contract. Noncompliance may result in the withholding of future payments. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other contracts involving EECBG funds, may also result in a debarment action to preclude future contracts by Federal agencies.

**SEC. 10. LICENSE**

A. On all inventions developed hereunder and patents or patent applications derived from such inventions, the City and the DOE shall be granted a no-cost, nonexclusive, nontransferable, irrevocable worldwide license to use for or on behalf of the City or Federal Government. Contractor must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions.

B. The City and DOE make no claim to intellectual property that existed prior to this contract and was developed without DOE and City funding. If applicable, the Contractor gives notice that the items listed in the Intellectual Property attachment or exhibit have been developed without DOE or City funding and prior to the start of this contract. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this contract, may be necessary if City or DOE funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights.

C. The Commission shall be granted a no-cost use of the technical data first produced or specifically used in the performance of this contract.

## **SEC. 11. PUBLICATIONS**

- A. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- B. An acknowledgment of City of Greensboro and 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 California Energy Commission and the Department of Energy under Award Number DE-0000905."

*Disclaimer:* "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any 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 California Energy Commission, 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 California Energy Commission, the United States Government, or any agency thereof."

## **SEC. 12. DISPUTE RESOLUTION**

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the City's Project Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City's Project Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City's Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.



Performance During Dispute - Unless otherwise directed by the City's Project Manager, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this agreement or its breach may be resolved by mediation if the parties mutually agree, or in a court of competent jurisdiction Greensboro, Guilford County, North Carolina.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **SEC. 13. SITE VISITS**

The City, the DOE, and/or their designees 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. Contractor must provide and must require subcontractors to provide reasonable facilities 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.

**SEC. 14. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS- SENSE OF CONGRESS**

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

**SEC. 15. LOBBYING RESTRICTIONS**

Contractor agrees that none of the funds disbursed pursuant to this contract 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.

**SEC. 16. NONDISCRIMINATION CLAUSE**

This award is subject to the provisions of 10 CFR Part 1040.1 *et seq.* The Contractor will certify its commitment to comply with this law by executing and returning to the City's Project Manager, the DOE Form 1600.5, U.S. DOE "Assurance of Compliance, Nondiscrimination in Federally Assisted Programs", attached hereto as Exhibit B.

**SEC. 17. CERTIFICATIONS REGARDING LOBBYING AND DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

This contract is subject to the provisions of 10 CFR Part 601, 2 CFR Part 180, 2 CFR Part 901, and 10 CFR Part 607. By accepting funds under this award, the Contractor agrees that none of the funds obligated under this agreement 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. The Contractor shall disclose lobbying activities by completing and signing the "Disclosure of Lobbying Activities" , attached hereto as Exhibit C and returning it to the City's Project Manager.

**SEC. 18. NATIONAL POLICY ASSURANCES**

The Contractor agrees to adhere to and include in all subawards and subcontracts the requirements set forth in the attached "National Policy Assurances" attached hereto as Exhibit D. Terms are self-deleting to the extent they do not apply to a particular type of activity or award.

**SEC. 19. FEDERAL INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION**

- A. In addition to the "License" provisions in Section 7 of this Agreement, the Recipient must conform to "Federal Intellectual Property Provisions" (Exhibit C Attachment C-5) included in this Agreement, A list of all intellectual property provisions may be found at [http://www.oc.doagov/financial assistance awards.htm](http://www.oc.doagov/financial%20assistance%20awards.htm).
- B. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual Property \(IP\) Service Providers for Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual%20Property%20Service%20Providers%20for%20Acquisition.pdf).

**SEC. 20. DECONTAMINATION AND/OR DECOMMISSIONING (D &D) COSTS**

Notwithstanding any other provisions of this Agreement, neither the DOE nor the City shall be responsible for or have any obligation to the Contractor or its subcontractors or subawardees for (i) Decontamination and/or Decommissioning (D&D) of any of the City's or the Contractor's or its subcontractors' or subawardees' facilities, or (ii) any costs which may be incurred by the Contractor's or its subcontractors' or subawardees in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

**SEC. 21. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE**

The Contractor is restricted from taking any action using federal funds for projects under this award that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

If the Contractor moves forward with activities that are not authorized for federal funding by the DOE Contracting Officer in advance of the final NEPA determination, the Contractor is doing so at risk of not receiving federal funding, and such costs may not be recognized as allowable cost share.

If the Contractor is conducting construction activities, it must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

**SEC. 22. HISTORIC PRESERVATION**

Prior to the expenditure of EECBG Program funds to alter any structure or site, the Contractor is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) outlined in 36 CFR Part 800, consistent with DOE's

2009 letter of delegation of authority regarding the NHPA. Section 106 of the NHPA applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. Contractor shall avoid undertaking any project activities that result in an adverse effect to historic properties pending compliance with Section 106. Section 110(k) of the NHPA applies to DOE funded activities.

In order to fulfill the requirements of Section 106, the City and the Contractor must consult with the North Carolina Department of Cultural Resources, (NCDRCR), and, if applicable, the North Carolina State Commission for Indian Affairs (NCSCIA), to ensure proposed projects will have no adverse effects on any historic resources.

The Contractor certifies that it will retain sufficient documentation to demonstrate that it has received the required approval(s) from the NCDRCR or the NCSCIA for the project, if applicable. The Contractor shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106. The Contractor shall deem compliance with Section 106 of the NHPA complete only after it has received this documentation. The Contractor shall make this documentation available to the City and/or the DOE upon request (i.e., during a post-award audit).

## **SEC. 23. AVAILABILITY OF FEDERAL FUNDS**

It is mutually agreed that partial or whole funding for this Agreement is dependent upon a federal agreement (DE-EE0000767/000) that has a scheduled budget period end date of August 2, 2012, and is subject to the following provisions: (1) This Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms, or funding of this Agreement; (2) Funding for this Agreement is subject to the approval of the U.S. Department of Energy (DOE) and to any additional restrictions, limitations, or conditions imposed by DOE, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement; (3) If Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds; and (4) The DOE has the option to invalidate the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in funds.

**SEC. 24. STATEMENT OF FEDERAL STEWARDSHIP**

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

**SEC. 25. DISCLOSURE AND USE OF REBATE PROCEEDS AND OTHER COST SHARE FUNDING**

The City is required to disclose all sources of cost share funding that will support the projects and activities under this Agreement, including the receipt of any utility or manufacturer rebates for which the Contractor qualifies through the purchase or installation of energy efficiency measures under this Agreement. Such "cost share funding" sources include, but are not limited to: repayments to and interest earned on a revolving loan fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds. Contractors shall adjust payment requests for cost reimbursement by any cash available from any of these cost share funding sources. Contractors that earn program income as defined at 10 CFR Part 600.124 may add the program income to the funds provided under this Agreement and used to further eligible project objectives.

**SEC. 26. SPECIFIC REQUIREMENT TO SUBMIT WASTE MANAGEMENT PLAN**

Prior to the proposed project activities generating any waste, the Contractor is required to submit a copy of its Waste Management Plan to the City's Project Manager. This Waste Management Plan will describe the Recipient's plan to dispose of any sanitary or hazardous waste generated by the proposed project activities. Sanitary and hazardous waste includes, but is not limited to, construction and demolition debris, old light bulbs, fluorescent ballasts and lamps, piping, roofing material, discarded equipment, debris, and asbestos. The Contractor's Waste Management Plan must comply with all federal,

state, and local laws and regulations governing waste disposal. The Contractor shall make its Waste Management Plan and related documentation available to the City and/or DOE upon request (i.e., during a post-award audit).

## **SEC. 27. RETENTION OF RECORDS**

The Contractor shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the final payment has been received or three years after the federal grant term, whichever is later, unless otherwise specified in the funding Agreement.

Records for nonexpendable personal property acquired with grant funds shall be retained for three years after its final disposition or three years after the federal grant term, whichever is later.

## **SEC. 28. SINGLE AUDIT ACT**

In order to be eligible for EECBG Program funding, all cities, counties, and lead collaborative applicants must be in compliance with the requirements of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156, and Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governmental, and Non-Profit Organizations. More specifically, OMB Circular A-133, Subpart B, Section .200 requires that non-Federal entities which expend \$500,000 or more in a year in Federal awards shall have a single or program specific audit conducted for that year. Thus, prior to the City reimbursing the Contractor for any project costs, the Contractor must demonstrate compliance with the Single Audit Act and OMB Circular A-133. If after four months following the execution of this Agreement the Contractor is not in compliance with these requirements, the City reserves the right to terminate this Contract and reallocate EECBG Program funding, as provided in the Block Grant Guidelines.

Further, in executing this Agreement, the Contractor understands and acknowledges that compliance with the Single Audit Act and OMB Circular A-133 is mandatory and that failure to comply at any time during the period of this Agreement could adversely



affect the City's ability to reimburse project costs, and may require the termination and reallocation of the grant award.

**SEC. 29. CASH MANAGEMENT IMPROVEMENT ACT**

In accordance with 31 United States Code (U.S.C.) Sections 3335, 6501, and 6503 (the Cash Management Improvement Act, or CMIA) and implementing regulations at 31 CFR Part 205, the City must minimize the time elapsing between the drawdown of funds from the DOE and the disbursement of funds. The City will request reimbursement to occur as close as possible to the disbursement. The Contractor will also comply with all applicable CMIA provisions and regulations.

**SEC. 30. PROJECT EXTENSIONS**

Project extensions are not permitted for EECBG grants. Projects must be completed and operational by the ending term date of this Agreement. If a project cannot be completed within the term of this Agreement, the Agreement will be terminated and remaining grant funds unencumbered.

**SEC. 31. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS**

The Contractor recognizes that the City may use these EECBG funds for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The DOE intends to publish “Best Practices” or other guidelines pertaining to the use of funds made available to the City under this award pertaining to the programs identified herein. The City will incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Contractor agrees to incorporate to the maximum extent practicable the best practices and other guidelines into its activities, practices, and procedures in this contract.

## **SEC. 32. INDEMNIFICATION**

To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless the City of Greensboro, its agents, officers, and employees, and the United States Department of Energy, its agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this contract as a result of the acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable except for damage or injury caused solely by the negligence of the City its agents, officers, or employees. In performing its duties under this section, the Contractor shall at its sole expense defend the United States Department of Energy and the City of Greensboro, their agents, officers, and employees with legal counsel reasonably acceptable to both the United States Department of Energy and the City of Greensboro. As used in this subsection – “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney’s fees, and amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the United States Department of Energy or the City of Greensboro that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

## **SEC. 33. TERMINATION FOR CAUSE.**

If the Contractor refuses or fails to prosecute the work or any separable part thereof with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for cause. Before terminating this contract for cause pursuant to this section, the City shall deliver a “Notice of Termination” to the Contractor specifying the nature of the breach or default. The Notice of Termination will state how the breach or default may be corrected and the time period by which such breach or default shall be corrected. If Contractor fails to remedy the breach or default or any of the terms, covenants, or conditions of this contract within the time period specified in the Notice of Termination,

the City shall have the right to terminate the Contract without any further notice or obligation to Contractor. Any such termination for cause shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default. In this event, the City may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plants on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the City resulting from the Contractor's refusal or failure to complete the work within specified time. This liability includes any increased costs incurred by the City in completing the work and reasonable attorney's fees.

**SEC. 34. TERMINATION FOR CONVENIENCE.**

The performance of work under this contract may be terminated in whole or in part by the City upon delivery to the Contractor of a written "Notice of Termination for Convenience" specifying the extent to which such termination becomes effective, provided that such notice shall be given sixty (60) days prior to the date such cancellation or reduction is to be effective. After receipt of the Notice of Termination, except as otherwise directed by the City's Project Manager, the Contractor shall stop work under this contract on the date and to the extent specified in the Notice of Termination; place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the portions of the contract that is not terminated; terminate all orders and subcontracts to the extent they relate to the performance of work terminated by the Notice of Termination; assign to the City in the manner, at the time, and to the extent directed by the City's Project Manager all of the right, title, and interest of the Contractor under order and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; complete the performance of such part of the work that has not been terminated by the Notice of Termination; and take such action as may be necessary, or as the City's Project Manager may direct for the protection or preservation of the property related to this Contract which is in the possession of the Contractor and in which the City has or may acquire an interest.

**CITY OF GREENSBORO ARRA RIDER**  
**UNITED STATES DEPARTMENT OF ENERGY**

**INTRODUCTION**

This project is financed in whole or in part with funds from the *American Recovery and Reinvestment Act of 2009* (hereinafter, "ARRA") through the U.S. Department of Energy (DOE) and the Energy Efficiency and Conservation Block Grant Program (EECBG). The City of Greensboro Housing and Community Development Department administers these funds. As a result of using ARRA funds on this project, Contractors must adhere to all of the following conditions in order to enter into a contract using ARRA funds. The following conditions take precedence over any conflicting conditions in the contract:

**SEC. 1. APPLICATION TO SUBCONTRACTORS.**

No funds under this contract shall be disbursed by the Contractor to any sub-contractor or agency without a written contract that incorporates the conditions listed below to the extent they are applicable.

**SEC. 2. DEFINITIONS.** As used in this contract:

- A. "DOE" means the United States Department of Energy, the Secretary of the Department of Energy, or a person authorized to act on its behalf.
  
- B. "City" means the City of Greensboro or any department or person authorized to act in its behalf.

- C. "EECBG" means the Energy Efficiency and Conservation Block Grant Program.

### **SEC. 3. REGISTRATION WITH CENTRAL CONTRACTOR REGISTRATION (CCR)**

Contractor shall register with the Central Contractor Registration (CCR) database at [www.ccr.gov](http://www.ccr.gov), if not already registered therewith. This ensures consistent reporting of data about each entity and thereby makes data more useful to the public. In order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required and will be included in this agreement.

### **SEC. 4. ARRA SIGNAGE REQUIREMENT**

The Contractor shall erect in a conspicuous place on each job site signage in accordance with federal rules and regulations that features the ARRA Primary Emblem throughout the construction phase. The sign should include the City's name, project name, the Contractor's name, the funding agency name, assistance amount, and total project costs. The American Recovery and Reinvestment Act of 2009 emblem must be displayed prominently on the sign. The emblem can be found at

<http://www.recovery.gov/files/ARRA.zip>. The logo must be at least six inches in diameter. Letter sizing and spacing must be approved by the City's project engineer.

### **SEC. 5. LIMIT ON FUNDS Section 1604 of ARRA provides:**

None of the funds appropriated or otherwise made available in ARRA 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.

### **SEC. 6. AVAILABILITY OF FUNDS**

Funds obligated to this contract are available for reimbursement of costs until August 2, 2012.

**SEC. 7. ADDITIONAL FUNDING DISTRIBUTION AND ASSURANCE OF APPROPRIATE USE OF FUNDS**

Certification by Governor- 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 for local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

**SEC. 8. CERTIFICATIONS**

With respect to funds made available to State or local governments for infrastructure investments under the American Reinvestment and Recovery 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.

**SEC. 9. SEGREGATION OF COSTS.**

Contractor shall segregate obligations from other sources of funding, the obligations and expenditures of ARRA Funds. ARRA Funds shall not be comingled with any other funds or used for a purpose other than the payment of costs allowable under ARRA.

**SEC. 10. ACCESS TO RECORDS AND RECORDS RETAINAGE.**

- A. Records to be Kept.** Records shall be maintained in accordance with requirements prescribed by DOE or the City with respect to all matters

covered by this contract. Except as otherwise authorized by DOE, such records shall be maintained for a period of three (3) years after receipt of the final payment under this contract.

**B. Documentation of Costs.** All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents. All documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

**C. Inspection of Records.** Pursuant to Section 902 of ARRA, the U.S. Comptroller General and its representatives shall have the express authority and right to:

- (1) examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Pursuant to Section 1515(a) of ARRA, any representative of the U.S. Office of Inspector General may examine any records or interview any employee or officers working on this contract. The Contractor hereby acknowledges that representatives of the Office of Inspector General have the authority to examine any record of the Contractor and interview any employee or officer of the Contractor, its subcontractors or other firms working on this Contract.

The authority of the U.S. Comptroller General and U.S. Inspector General or any of their representatives is not limited or restricted by Section 902 and 1515(a) of ARRA respectively.



Additionally, the Contractor shall make available for examination all of its records with respect to all matters covered by this contract to the U.S. Comptroller General, the U.S. Inspector General and their representatives, DOE and the City. The Contractor will also permit any or all of these aforementioned entities to audit, examine and make excerpts or transcripts from such records including contracts, invoices, materials, payrolls, records of personnel, conditions of employment and any other data relating to matters covered by this contract.

#### **SEC. 11. REPORTING REQUIREMENTS.**

The City, as a recipient of funds from the United States Department of Energy and ARRA, must comply with both the DOE's and ARRA's extensive reporting requirements, including quarterly financial and programmatic reporting due within 10 calendar days after the end of each calendar quarter. The City will require periodic reports from its Contractors in order to fulfill its reporting obligations under both DOE and ARRA. Contractors receiving ARRA funds may expect that a standard form(s) and/or reporting mechanism will be made available at a future date.

Contractor agrees to provide to the City all reports, documentation, or other information, as may be required by the City to meet reporting obligations under the Federal Assistance Reporting Checklist, DOE F 4600.2 attached hereto as Attachment F and ARRA. Contractor's receipt of funds is contingent on the Contractor meeting the reporting requirements of Federal Assistance Reporting Checklist **and** Section 1512 of ARRA. Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Contractors receiving ARRA funds should be aware that ARRA section 1512(c) provides:

Recipient Reports- Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

- (1) The total amount of recovery funds received from that agency;
- (2) The amount of recovery funds received that were expended or obligated to projects or activities; and
- (3) A detailed list of all projects or activities for which recovery funds were expended or obligated, including:
  - (a) The name of the project or activity;
  - (b) A description of the project or activity;
  - (c) An evaluation of the completion status of the project or activity;
  - (d) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
  - (e) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the

infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

Noncompliance with either the Federal Assistance Reporting Checklist or Section 1512(c) of ARRA is considered a material breach of this contract. Noncompliance may result in withholding of future payments or termination of the contract.

**SEC. 12. BUY AMERICAN. Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of ARRA**

Contractor shall comply with Section 1605 of ARRA unless (1) compliance has been waived by the Federal Agency providing the funds; or (2) compliance with ARRA conflicts with an international trade agreement.

**A. Section 1605 of ARRA provides:**

Use of American Iron, Steel, and Manufactured Goods.

(a) None of the funds appropriated or otherwise made available by ARRA may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that:

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

**B. International Trade Agreements.**

Contracts for the procurement of goods and services in the amount of \$528,000 or more and for constructions services in the amount of \$7,443,000 or more are covered by an international trade agreement and are therefore not subject to Section 1605.

**C. Waivers.**

Contractor shall provide the City with information and applicable supporting data as may be required by the City, to support any request for waiver of compliance with Section 1605 (b) of ARRA. The following applies to requests for waivers submitted to the City:

(a) Definitions.

“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) Domestic preference.

(1) This award term and condition implements Section 1605 of ARRA of 2009 by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) of this term and condition.

(2) This requirement does not apply to the material excepted by the Federal Government.

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term 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 ARRA would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of ARRA.

(1)(i) Any request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

(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 request for a determination submitted after ARRA funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the [Contractor/Grantee] could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated.

(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 ARRA applies, the [State Agency] 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 [State Agency] shall adjust the award amount or redistribute budgeted funds in accordance with requirements adopted pursuant to ARRA.

(3) Unless the Federal Government determines that an exception to section 1605 of ARRA applies, use of foreign iron, steel, and/or

manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers should be provided to [State Agency]: 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			

## **SEC. 13. LOBBYING.**

The Contractor certifies, to the best its knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements.

4. This certification is a material representation of fact upon which reliance was placed when this contract was made or entered into. Agreement to this certification is a prerequisite for making or entering into this contract imposed by Section 1352, title 31, U.S. Code and ARRA. Any person or agency that makes an expenditure prohibited by this section is subject to a civil penalty from \$10,000 up to \$100,000 for each failure. This penalty also applies to any person or agency that fails to submit or amend the disclosure form (LLL), when required. Failure to submit the required certification may result in payment under this contract being delayed or denied.



## **SEC. 14. DISCRIMINATION.**

Contractors shall comply with all relevant requirements of the following federal laws and regulations dealing with discrimination in federally assisted programs:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 20000d)** which provides that no person shall, on the ground of race, color, or national origin, be excluded from employment or participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- B. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309) and regulations at 24 CFR 570.602** which provide that no person shall on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, be denied employment in, or be subjected to discrimination under any CDBG/HOME program or activity.
- C. Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794)** which provides that no otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, be denied employment in, or be discriminated against under any program or activity receiving federal assistance.
- D. Age discrimination Act of 1975, as amended (42 U.S.C. 6101)** which provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.
- E. Executive Order 11246, as amended by Executive Order 11375, and Executive Order 12086 and regulations in 41 CFR 60,** which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally-assisted construction contracts and subcontracts. Contractors and subcontractors shall take affirmative action to ensure fair treatment in employment, including recruitment, training, promotion, demotion, transfer, layoff, termination, and pay.

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions in this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advertising the labor union or worker's representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and

will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, and orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No, 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the contracting agency, and may direct the subcontractor or vendor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

## **SEC. 15. LABOR STANDARDS.**

Contractors shall comply with all relevant requirements of the following federal laws and regulations dealing with labor standards in federally assisted programs:

### **A. Davis-Bacon Act Provisions.**

**Definitions:** For purposes of this Section, the following definitions are applicable:

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

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

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

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

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

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

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

**(a)(1) Minimum wages.**

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage

rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

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

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

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably

anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid



(including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the **Department of Energy** if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the **Department of Energy**. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social

security number and current address of each covered worker, and shall provide them upon request to the **Department of Energy** if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the City of Greensboro, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

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

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

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

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

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

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are

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

program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the **Department of Energy** may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the

contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

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

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

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

**B. Copeland "Anti-Kick Back Act" (18 U.S. C. 876) as supplemented in Department of Labor regulations (29 CFR Part 3).**

This Act provides that the Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

**C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.).**

(a) Contract Work Hours and Safety Standards Act (CWHSSA). This Clause shall apply to any Subaward or Contract in excess of \$100,000. As used herein, Clause, the terms laborers and mechanics include watchmen and guards.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

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



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

(b) In addition to the clauses in (a)(1) through (4) above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Contractor shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Contractor shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the **Department of Energy** and the Department of Labor, the City of Greensboro, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**SEC. 16. Clean Water, Clean Air, E.O. 11738 and EPA Regulations Provision Compliance with Air and Water Acts.**

The Clean Water, Clean Air, Executive Order 11738 and the EPA Air and Water Acts apply to ARRA assisted construction contracts and related subcontracts exceeding \$100,000. In compliance with Section 306 of the Clean Air Act, as amended, (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended, (33 U.S.C. 1368), Executive Order 11738, and the Regulations (40 CFR, part 15) of the Environmental Protection Agency with respect thereto the Contractor agrees that:

- a. Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
- b. They will comply with all requirements of Section 306 of the Clean Air Act, as amended, and Section 508 of the Clean Water Act, as amended, and all regulations and guidelines issued thereunder.
- c. They will promptly notify the City of any notification received from the EPA Office of Federal Activities, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
- d. They will include the provisions of paragraph 1 through 4 of this subpart in every nonexempt subcontract, and take such action as the Government may direct as a means of enforcing such provisions.

#### **SEC. 17. ENERGY CONSERVATION**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

#### **SEC. 18. LEAD BASED PAINT.**

The use of lead-based paint in the federally assisted construction or rehabilitation of residential structures (including day cares, senior centers, and community facilities) is prohibited by Section 401(b) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4831(b)] and regulations in 24 CFR 35B. To the extent that contracted work involves residential structures, the Contractor and subcontractors must follow the new regulations issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X ("ten") of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally associated housing. The new regulation appears within title 24 of the Code of Federal Regulations as part 35 (24 CFR 35).

1. The Contractor and subcontractors shall not use lead-based paint in residential structures and shall eliminate any lead-based paint hazards in residential structures rehabilitated.
2. At a minimum the Contractor and subcontractors must comply with the Lead Hazard Reduction Methods in 24 CFR 35.1330 and 1325.
3. All workers involved in the disturbance of lead-based paint bearing surfaces should be trained in lead safe work practices.
4. At the conclusion of residential rehabilitation, the property must pass a lead hazard clearance test by a certified technician and lab. The lead level must meet the federal and North Carolina standard lead level threshold for Childhood Lead Exposure Act of North Carolina and the Environmental Protection Agency. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in 24 CFR 35.1350(d).

**SEC. 19. COPYRIGHTS AND RIGHTS IN DATA.**

The United States Department of Energy reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

**SEC. 20. PUBLICATION.**

Privileged or confidential information contained in an application or bid, including, but not limited to, trade secrets, which the applicant or bidder does not want disclosed to the public or used by DOE or the City, shall be specifically identified by each page, including each line or paragraph thereof, containing the data to be protected. The

Contractor shall mark the cover sheet of the document or medium upon which the information is contained 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 \_\_\_\_\_ [ i.e. pages \_\_\_\_ of the \_\_\_\_\_ ] 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 or bidder receives an award as a result of or in connection with the submission of this application or bid, 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](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.

**SEC. 21. USE OF DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS.**

EECBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Contractor or subcontractor during any period of debarment, suspension or placement in ineligibility status under the provisions of 24 CFR Part 24. (Government Debarment and Suspension Regulations). By signing this agreement, Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction nor from federal financial or non-financial assistance, nor are any of the participants involved in the execution of this agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension) and CFR 44 Part

17, or are on the disbarred vendors list at [www.epls.gov](http://www.epls.gov). Further, Contractor agrees to notify Agency by certified mail should it or any of its agents become debarred, suspended, or voluntarily excluded during the term of this agreement. The Contractor agrees and assures that it, its subcontractors and third party contractors will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any contract. The City will be reviewing all third party contractors under the Excluded Parties Listing System at <http://epls.gov/> before entering into any contracts

## **SEC. 22. CONFLICT OF INTEREST.**

**A.** Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials. No officer, employee or agent of the City, and no sub-grantee or sub-recipient of any federal or state funds from the City shall participate in the selection or in the award or administration of a contract supported by federal, state, or city funds if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when any of the following persons or entities has a financial or other interest in the firm selected for the award:

- (i) The employee, officer, agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, anyone listed in (i) through (iii) above.

The grantee's or sub-grantee's officers, employees or agents will not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements except as may be allowed in the City's Gift Policy.

**B. Contractor's Responsibilities.** The Contractor shall take appropriate steps to assure compliance with paragraph (A) of this section, and will incorporate paragraph (A) of this section into every sub-contract

## **SEC. 23. PROTECTION OF WHISTLEBLOWERS**

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the Recovery Act 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 mismanagement of an agency contract or grant relating to covered funds;
- Gross waste of covered funds;
- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- Abuse of authority related to the implementation or use of covered funds; or
- 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.

A person who believes that he or she has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate U.S. Office of the Inspector General.

Any employer/contractor receiving covered funds under ARRA, shall post notice of the rights and remedies as required by Section 1553 of ARRA. See [www.recovery.gov](http://www.recovery.gov).

## **SEC. 24. LISTING ARRA JOBS WITH THE ESC .**

All job openings created by the Contractor for this project must be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource. In addition, all Sub-Contractors/Sub-Grantees hired by the Contractor also must be required to list jobs and report hiring results to WorkSource. Existing Contractor or Sub-Contractor employees who are retained using funds from this project also must be reported to WorkSource.

WorkSource will pre-screen and refer qualified job candidates for the Contractor's consideration. The Contractor also has the discretion to use other, additional recruitment systems and retains the right to make all hiring decisions. To begin the listing and reporting process, contact the ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849 or [ARRA@esd.wa.gov](mailto:ARRA@esd.wa.gov).

## **SEC. 25. RESOLUTION OF DISPUTES.**

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the City's Project Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City's Project Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City's Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the City's Project Manager, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time

after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this agreement or its breach may be resolved by mediation if the parties mutually agree, or in a court of competent jurisdiction Greensboro, Guilford County, North Carolina.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.



## **SEC. 26. TERMINATION FOR CAUSE.**

If the Contractor refuses or fails to prosecute the work or any separable part thereof with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for cause. Before terminating this contract for cause pursuant to this section, the City shall deliver a "Notice of Termination" to the Contractor specifying the nature of the breach or default. The Notice of Termination will state how the breach or default may be corrected and the time period by which such breach or default shall be corrected. If Contractor fails to remedy the breach or default or any of the terms, covenants, or conditions of this contract within the time period specified in the Notice of Termination, the City shall have the right to terminate the Contract without any further notice or obligation to Contractor. Any such termination for cause shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default. In this event, the City may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plants on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the City resulting from the Contractor's refusal or failure to complete the work within specified time. This liability includes any increased costs incurred by the City in completing the work and reasonable attorney's fees.

## **SEC. 27. TERMINATION FOR CONVENIENCE.**

The performance of work under this contract may be terminated in whole or in part by the City upon delivery to the Contractor of a written "Notice of Termination for Convenience" specifying the extent to which such termination becomes effective, provided that such notice shall be given sixty (60) days prior to the date such cancellation or reduction is to be effective. After receipt of the Notice of Termination, except as otherwise directed by the City's Project Manager, the Contractor shall stop work under this contract on the date and to the extent specified in the Notice of Termination; place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the portions of the contract that is not terminated; terminate all orders and subcontracts to the extent they relate to the performance of work terminated by the Notice of Termination; assign to the City in the manner, at the time, and to the extent directed by the City's Project Manager all of the right, title, and interest of the Contractor under order and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all

claims arising out of the termination of such orders and subcontracts; complete the performance of such part of the work that has not been terminated by the Notice of Termination; and take such action as may be necessary, or as the City's Project Manager may direct for the protection or preservation of the property related to this Contract which is in the possession of the Contractor and in which the City has or may acquire an interest.

**SEC. 28. TERMINATION FOR LACK OF FEDERAL FUNDING.**

If federal funding for this project is terminated and no other funding is available for continuation of this project, the City will not be obligated to continue funding for the services contained in this contract and may terminate the contract pursuant to Sec. 20, Termination for Convenience. In the event of termination for lack of federal funding, all property and finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by or purchased with EECBG funds by the Contractor under this contract shall, at the option of the City, become the City's property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.