

2011-000057

CONTRACT NO: 2011-132031
AMENDMENT NO: DOES NOT APPLY
CONSULTANT: DEPARTMENT OF STATE
CONSULTANT'S NO: 660-43-3481
ACCOUNT NO: E6890-256-132-04R-2010-DE-EE0000945
GOVERNMENT OFFICIALS: JAN M. MADURO RIVERA

COMMONWEALTH OF PUERTO RICO
ENERGY AFFAIRS ADMINISTRATION
SUBGRANTEE AGREEMENT

APPEAR

-----AS PARTY OF THE FIRST PART: ENERGY AFFAIRS ADMINISTRATION, employee identification number 660-43-3481, represented by its Executive Director, Luis M. Bernal Jimenez, of legal age, married and resident of Guaynabo, Puerto Rico hereinafter referred to as the ADMINISTRATION.-----

-----AS PARTY OF THE SECOND PART: Puerto Rico Department of State, employee identification number 660-63-7290, a Puerto Rico governmental entity, represented by Vanessa Viera Rabelo, Deputy Secretary, of legal age, married, and resident of Carolina, by virtue of the duties and faculties delegated under the Executive Order No. OE-2009-002 promulgated on January 9, 2009, hereinafter referred to as the Department of State, the SUBGRANTEE or the SUBRECIPIENT.-----

STATEMENT OF PURPOSE

-----The Energy Efficiency and Conservation Block Grant Program (EECBG) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (ARRA) which purpose is to assist eligible entities in creating and implementing strategies to: 1) reduce fossil fuel emissions in a manner that is environmentally sustainable and, to the maximum extent practicable, maximizes benefits for local and regional communities; 2) reduce the total energy use of the eligible entities; and 3) improve energy efficiency in the building sector, the transportation sector, and other appropriate sectors. This Agreement describes the responsibilities of the parties, in expending the grant award. Accordingly, the parties hereto agree to the following:-----

TERMS AND CONDITIONS

-----FIRST: STATEMENT OF OBJECTIVES:

A. PROJECT OBJECTIVES

The purpose of this award is to evaluate feasible savings on Department of State Buildings to be retrofitted in order to reduce energy consumption. Key building and operational characteristics and energy use data from a previous energy audit will be used to assess and understand the current energy performance of Department of State Buildings.

The Energy Audit evaluated:

- 1. Electrical supply system for power consumption, load factor and power factor.
- 2. Potential savings in illumination of the facilities, including lighting type, use, required lumen, and the use of sensors.

3. Refrigeration, air conditioning and ventilation systems (Examples: Load modulation, rooms & AHU's set points, maintenance issues, air leaks, chilled water leak, fouling in heat exchangers, heat pipes, AC condensate recovery, among others).
4. Type of motors used in fans, pumps, and other applications.
5. Insulation of buildings' chilled water and hot water pipe headers.
6. Building enclosure infiltrations.
7. Hot water systems (set points, insulation).
8. Automation systems in use.

The strategy for the Energy Audit was:

1. Evaluate the utilities infrastructure for possible retrofits and/or upgrades.
2. Evaluate improvement to buildings' enclosure to save energy consumption.
3. Optimize utilities use, performance and consumptions in each system and buildings; evaluate best energy practice to apply.
4. Reduction of outside infiltrations.

Upon evaluation of the Energy Audit, Department of State will select the energy conservation and efficiency improvement project to be implemented with the EECBG Sub-Grant funds.

B. PROJECT SCOPE

The purpose of this award is to evaluate feasible savings on Department of State Buildings to be retrofitted in order to reduce energy consumption, reduce fossil fuel emissions, along with creating jobs.

C. PROJECT MANAGEMENT AND REPORTING

Reports and deliverables will be provided in accordance with Energy Affairs Administration (EAA) Assistance Reporting Checklist. See, ATTACHMENT I.

-----SECOND: EAA ASSISTANCE REPORTING INSTRUCTIONS;

A. MONTHLY REPORT

The Department of State will report monthly to the EAA the progress of the projects. The Monthly Reports must be submitted by Department of State no later than five (5) days after the end of each calendar month, . The monthly reports should include, as a minimum, all information listed below and all necessary report requirements as per Standard Project Management practices.

- Project Description
- General progress of the project work
- Activities performed during the month
- Accomplishments and Achievements during the month
- Project Schedule Update
- Comparison of how the actually employed resources matched planned levels
- A forecast of time to complete each work activity

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- Description of actual or potential delays, including related causes, and the steps taken or anticipated to mitigate their impact
- Changes to activity logic, new activities and sequences as a result of executed contract changes, and changes to the Critical Path
- Identification of, and accompanying reason for, any activities added or deleted since the last Narrative Progress Report
- Identification of any quality control problems
- Variance of Project budget and project completion cost forecast
- Any expected task, budget or schedule completion concerns
- Work Plan for the following month

B. FINAL REPORT

The Department of State must submit a Final Report to the EAA. The final report is due at the EAA Office not later than twenty (20) working days after completion of the project work. The final report should include, as a minimum, all information listed below and all necessary report requirements as per Standard Project Management practices.

- Project Description
- Accomplishments and Achievements of the project
- Final Project cost
- Variance of Final Project Cost from Approved Project Budget
- Total required time to complete the project work
- Jobs created and/or retained
- Energy savings on a per dollar invested basis
- Renewable energy capacity installed
- Greenhouse gas emissions reduced
- Funds leveraged (if any)
- Photos of the project (before and after improvements)
- Final Acceptant Tests results
- Final Inspection and Acceptance Report
- List of residual inventory of unused supplies if any have an aggregate value in excess of \$ 5,000.00; if any, please indicate if:
 - The supplies will be used on another state- or federally-sponsored activity (list activity and agency); or
 - The supplies will be sold or retained for use on non-Federally sponsored activities and the Recipient will compensate EAA for its share of the sales proceeds (or estimate of current fair market value). If so, attach a list of the supplies with the following information:
 - ✓ Sale proceeds or estimate of current fair market value
 - ✓ Percentage of Federal participation
 - ✓ Federal share
 - ✓ Selling and handling allowance
 - ✓ Amount to be remitted to EAA

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C. QUARTERLY REPORT

Section 1512 of the Recovery Act requires reports on use of funds. No later than five (5) days after the end of each calendar quarter, Department of State shall submit a quarterly report. The quarterly report should include all necessary report requirements mentioned below:

- 1) The total amount of recovery funds received from that EAA;
- 2) The amount of recovery funds received that were expended or obligated to projects or activities; and,
- 3) A detail 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; and,
 - d. An estimate of the number of jobs created and the number of jobs retained by the project or activity.

4) Expenditures:

Accurate records should be kept and reported on project expenditures for all EECBG ARRA funded efforts. The specific information to be gathered and tracked is listed below. It will be the same for all project types:

- a. Total funds authorized by EAA as of the reporting period;
- b. Total funds received from EAA as of the reporting period;
- c. Expenditures for project activities (total cash disbursed);
- d. Expenditures for administration (total cash disbursed);
- e. Expenditures for evaluation (total cash disbursed);
- f. Total amount of unpaid Commitments;
- g. Leveraged funds (recipient share of actual cash disbursements for the reporting period); and,
- h. Cash on hand of received funds from the EAA.

5) Metrics Activity:

The minimum information to be reported, by project activity type, is reported below.

Building Retrofits

- i. Number of buildings retrofitted, by sector
- ii. Square footage of buildings retrofitted, by sector

6) Energy Savings (KW-H equivalents)

- a. Annual reduction in natural gas consumption (mmcf) by sector and end-use category
- b. Annual reduction in electricity consumption (MWh) by sector and end-use category
- c. Annual reduction in electricity demand (MW) by sector and end-use category

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- d. Annual reduction in fuel oil consumption (gallons) by sector and end-use category
- e. Annual reduction in propane consumption (gallons) by sector and end-use category
- f. Annual reduction in gasoline and diesel fuel consumption (gallons) by sector and end-use category

7) Job Creation/Retention

- a. Number
- b. Type
- c. Duration

8) Renewable Energy Capacity and Generation

- a. Amount of photovoltaic generating capacity installed (MW)
- b. Amount of electricity generated from photovoltaic systems (MWH)
- c. Amount of electric generating capacity from other renewable sources installed (MW)
- d. Amount of electricity generated from other renewable sources (MWH)

9) Emissions Reductions (tons) (CO2 equivalents)

- a. Carbon monoxide

-----**THIRD: GENERAL CONDITIONS**

1. 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 Energy Affairs Administration (EAA) Award for guidance.

2. AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Assistance Agreement, plus the following:

- a. Special Terms and Conditions for use in most grants (clauses number 3 through 17).
- b. Special provisions related to work funded under American Recovery and Reinvestment Act of 2009 (May 2009) (Clauses 18 through 24).
- c. Grant Application package as approved by EAA.
- d. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at: http://management.energy.gov/business_doe/1374.htm
- e. This award is a fixed obligation grant. The designated Authorized Representative of the sub-recipient shall certify in writing to the DOE, Contracting Officer at the end of the project that the activity was completed or the level of effort was expended, however should the activity or effort not be carried out, the sub-recipient would be expected to make appropriate reimbursements.

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3. AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Sub-recipient's authorized representative through hand delivered, mailed or emailed systems used by the EAA, constitutes the Sub-recipient's acceptance of the terms and conditions of the award. Acknowledgement via hand delivered, mailed or emailed by the Sub-recipient's authorized representative constitutes the Sub-recipient's signature.

4. PAYMENT PROCEDURES

- a. Method of Fund Disbursement for the Project. Disbursement of funds will be made by monetary advances through the EAA system before the commencement of the project based on the project approved proposal separated in phases. No other disbursement will be made until the previous advance has been completely used and reported with the proper documentation. There will be three monetary advances; the first one of 40% of the total funds, a second one of 40% of the total funds, and a last one of 20% of the total funds. (Also see, 10 CFR 600.221)
- b. Draw-down invoices. Each month the Department of State must submit an explained draw-down invoice detailing the expenses incurred and paid with grant funds for the approved project. Each invoice submitted by SUBGRANTEE must have a certification included that will read as follows:

"Under penalty of absolute nullity, THE DEPARTMENT OF STATE certifies that no employee from the PUERTO RICO ENERGY AFFAIRS ADMINISTRATION is part or has any interest in the revenues or benefits derived from this contract subject to this invoice and if an employee of the PUERTO RICO ENERGY AFFAIRS ADMINISTRATION is a party or has any interest in the revenue or benefits derived from this contract, it is authorized through a previously awarded exemption. The only consideration to supply the goods or services under this contract has been the payment agreed to by the Agency's authorized representative. The amount on this invoice is fair and correct. The services provided have been given and have not yet been paid."

EAA will not accept any invoice that does not contain the certification above.

5. MAXIMUM OBLIGATION

The maximum obligation of the EAA is limited to the amount shown on Assistance Agreement Cover Page (Block 12). See, ATTACHMENT II). You are required to complete the Scope of Work of the project with the total amount obligated. Any additional funds required to complete the Scope of Work of the project due to a mismanagement of the awarded funds or due to an overrun will be your sole responsibility to obtain the necessary funds to finalize the project in a satisfactorily manner to the EAA Project Manager.

The payments shall be made from the Account Number E6890-256-132-04R-2010-DE-EE0000945 (approval sheet no. 11-028). The sum of SIX HUNDRED THOUSAND DOLLARS (\$600,000.00) is release from the subgrant amount for disbursement. The Department of State shall provide EAA with an original bill

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and copies of any related invoices from the Department of State's contractor(s) or consultant(s) shall be attached thereto. The Department of State shall certify that the services were satisfactorily provided and pursuant to the terms and conditions of this contract.

6. LIMITATIONS ON USE OF FUNDS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools. The funds will be obligated on eligible activities mentioned on the Financial Assistance Funding Opportunity Announcement (Funding Opportunity Number: DE-FOA-0000013).

7. UNALLOWED INDIRECT COSTS AND UNUSED FUNDS

- a. The Sub-recipient is expected to manage their final negotiated project budgets, including their indirect costs and fringe benefit costs. EAA recognizes that the inability to obtain credit for indirect or fringe benefit costs means the Sub-recipient must absorb the under recovery.
- b. If actual allowable costs are less than those budgeted and funded under the award, the Sub-recipient may use the difference to pay additional allowable direct costs during the project period upon written approval from the EEA. If at the completion of the award the Government's share of total allowable costs is less than the total costs disbursed, the Sub-recipient must refund the difference.

8. STATEMENT OF FEDERAL STEWARDSHIP

DOE/EAA will exercise normal Federal/Local 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.

9. SITE VISITS

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

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10. REPORTING REQUIREMENTS

- a. Requirements. The reporting requirements for this award are identified on the Assistance Reporting Checklist, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards.
- b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

ARTICLE I. REPORTING DUTIES

In case the RECIPIENT needs and requests PRIFA's assistance for the EECBG - ARRA reporting:

1.1 RECIPIENT hereby agrees to use all ARRA Funds in a manner that is transparent to the public and to provide PRIFA and/or the ADMINISTRATION, in a clear, accurate and timely manner, all necessary information and documents as may be necessary for the preparation of reports to fulfill reporting requirements by the Government of Puerto Rico and RECIPIENT under ARRA and any applicable ARRA Regulation. At a minimum, the information included in Annex I shall be provided by RECIPIENT to PRIFA and/or the ADMINISTRATION. PRIFA and/or the ADMINISTRATION and any Federal grantor agency from which RECIPIENT receives ARRA Funds, the Comptroller General of the United States and any other applicable agency shall also be granted reasonable access to RECIPIENT's accounting systems, books, documents, records pertinent to the ARRA Funds as it may be necessary for overseeing of the use of such ARRA Funds and to otherwise enable the Parties to satisfy their obligations under the PRIFA Act, if applicable, and ARRA.

1.2 The Parties acknowledge that PRIFA, on behalf of RECIPIENT, itself and the Governor of Puerto Rico, may report and publish such information regarding RECIPIENT, its Projects, its use of ARRA Funds, its compliance with the requirements of ARRA and the ARRA Regulations, and such other matters necessary or appropriate to discharge the obligations of the Parties under the PRIFA Act and the obligations of the Government of Puerto Rico (including PRIFA and RECIPIENT) under ARRA and ARRA Regulations.

1.3 All ARRA Regulations, now in effect and as amended and supplemented from time to time, applicable to the Government of Puerto Rico are hereby incorporated by reference. RECIPIENT agrees to keep abreast of future updates.

11. PUBLICATIONS

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. All EECBG work related areas have to be identified as ARRA funded project.

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

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

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

12. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

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

13. HISTORIC PRESERVATION CLAUSE

Prior to the expenditure of Federal funds to alter any structure or site, the Sub-recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the sub-recipient must contact the State Historic Preservation Officer (SHPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>.

The EAA/DOE Contracting Officer shall consider compliance with Section 106 of the NHPA complete only after the Sub-recipient has submitted adequate background documentation to the SHPO for its review, and the SHPO has provided written concurrence to the Sub-recipient that it does not object to its Section 106 finding or determination. Section 110(k) of the NHPA applies to DOE funded activities, therefore, Sub-recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

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14. LOBBYING RESTRICTIONS

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

15. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. This restriction does not preclude you from developing, establishing, planning, or performing the Energy Audit of Department of State buildings and facilities.

If you move forward with activities that are not authorized for Federal funding by the EAA/DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to EAA/DOE initiating the NEPA process. Additionally, the EAA requires that Department of State fills the Categorical Exclusion Forms of the Puerto Rico Environmental Quality Board.

16. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Sub-recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Sub-recipient's facilities, or (ii) any costs which may be incurred by the Sub-recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

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

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and

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counterproductive State and local tax increases. Sub-recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Sub-recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Sub-recipients should begin planning activities for their first tier sub-sub-recipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Sub-recipient will be provided these details as they become available. The Sub-recipient must comply with all requirements of the Act. If the sub-recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the EAA/DOE Contracting Officer for reconciliation.

Definitions

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

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

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

Special Provisions

A. Flow Down Requirement

Sub-recipients must include these special terms and conditions in any sub-award.

B. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

- 1) to examine any records of the contractor or grantee, any of its subcontractors or sub-grantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or sub-grant; and
- 2) to interview any officer or employee of the contractor, grantee, sub-grantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not disclose to the public or used by the Government for

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any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, EAA 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.

F. Protecting State and Local Government and Contractor Whistleblowers

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to: Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- Gross management of an agency contract or grant relating to covered funds;
- A gross waste of covered funds;
- A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- An abuse of authority related to the implementation or use of covered funds; or
- As violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than thirty (30) days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an

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order denying relief in whole or in part or shall take one or more of the following actions:

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

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration:

- Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.)

G. False Claims Act

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

H. Information in Support of Recovery Act Reporting

Sub-recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and

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invoices. Sub-recipient shall provide copies of backup documentation at the request of the EAA.

I. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until twelve (12) months after the award date.

J. Certifications

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

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

- a. This award requires the sub-recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- b. The reports are due no later than ten (10) calendar days after each calendar quarter in which the Sub-recipient receives the assistance award funded in whole or in part by the Recovery Act.
- c. Sub-recipients and their first-tier sub-sub-recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.
- d. The sub-recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

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

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

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*Special Note: Definitization of the Provisions entitled, "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS - SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" and "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) - SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" will be done upon definition and review of final activities.

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

a. *Definitions.* As used in this award terms and conditions

- 1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been:
 - i. Processed into a specific form and shape; or
 - ii. Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- 2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- 3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- 4) *Domestic preference* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

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

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- 1) 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;
- 2) 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
- 3) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

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

- 1) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- 2) Unit of measure;
- 3) Quantity;
- 4) Cost;
- 5) Time of delivery or availability;
- 6) Location of the project;
- 7) Name and address of the proposed supplier; and
- 8) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b) (3) of this section.
 - i. A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
 - ii. The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
 - iii. Any sub-recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the sub-recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the sub-recipient does

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not submit a satisfactory explanation, the award official need not make a determination.

- d. If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is no availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).
- e. Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.
- f. Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Sub-recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of Measure	Quantity	Cost (\$)
Item 1:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

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

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

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

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

24. SPECIAL RECOVERY ACT AND TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURE IF FEDERAL AWARDS AND SUB-RECIPIENT RESPONSIBILITIES FOR INFORMING SUB-SUB-RECIPIENT

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

- b. For sub-recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," sub-recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF- SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures

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for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

- c. (c) Sub-recipients agree to separately identify to each sub-sub-recipient and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a sub-recipient awards Recovery Act funds for an existing program, the information furnished to sub-sub-recipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.
- d. (d) Sub-recipients agree to require their sub-sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the sub-recipient SEFA described above. This information is needed to allow the sub-recipient to properly monitor sub-sub-recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

25. DAVIS-BACON ACT REQUIREMENTS

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Sub-recipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

1) Definition:

- a. Site of the work means:
 - i. The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and
 - ii. The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is
 - 1. Located in the United States; and
 - 2. Established specifically for the performance of the award or project;

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- iii. Except as provided in paragraph (iv) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided:
 - 1. They are dedicated exclusively, or nearly so, to performance of the award or project; and
 - 2. They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;
- iv. Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

2) Wages

- a. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.
- b. 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

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mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

- c. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- d. The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) 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.

3) Classifications of Laborers or Mechanics

- a. The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
 - i. The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - ii. The classification is utilized in the area by the construction industry.
 - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- b. If the 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

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The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within thirty (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 of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 - d. The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs 3)b and 3)c of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.
- 4) Whenever the minimum wage rate prescribed in the award 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.
 - 5) 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.

Rates of Wages - Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (<http://cfr.vlex.com/vid/5-2-definitions-19681309>) will be performed during the course of the project, the Recipient shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the Recipient's determination, the Recipient must receive Contracting Officer approval to proceed with such activity, and must

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comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed. If the Contracting Officer does not concur with the Recipient's determination, the Contracting Officer will so notify the Recipient in writing.

26. SUB-RECIPIENTS' REQUIREMENTS REGARDING THE DAVIS-BACON ACT

- a. On behalf of the Department of Energy (DOE), Sub-recipient shall perform the following functions regarding the Davis-Bacon Act:
 - i. Obtain, maintain, and monitor all DBA certified payroll records submitted by Sub-sub-recipients and Contractors at any tier under this award;
 - ii. Review all DBA certified payroll records for compliance with DBA requirements including applicable DOL wage determinations;
 - iii. Notify DOE of any non-compliance with DBA requirements by Sub-sub-recipient or Contractors at any tier, including any non-compliance identified as the result of reviews performed pursuant to paragraph (b) above;
 - iv. Address DBA any Sub-sub-recipient's any Contractor's non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
 - v. Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
 - vi. Perform services in support DOE investigations of complaints filed regarding non-compliance by Sub-sub-recipients and contractors with DBA requirements;
 - vii. Perform audit services as necessary to ensure compliance by Sub-sub-recipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
 - viii. Provide copies of all records upon request by DOE or DOL in a timely manner.
- b. All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.
- c. In the event of, and in response to any freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Sub-recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.

-----FOURTH: GENERAL DUTIES;

RECIPIENT hereby agrees to designate a person as program manager per grant for the ARRA activities who shall have responsibility and authority to coordinate and review the planning, implementation, and performance of Projects funded with ARRA Funds. The program manager per grant will coordinate with EAA's designated coordinator for all ARRA related activities of RECIPIENT.

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In the use of ARRA Funds, the Parties shall also avoid unnecessary delays and cost overruns of Projects;

RECIPIENT hereby agrees to ensure all funds provided by ARRA are clearly distinguishable from non-ARRA Funds in all RECIPIENT financial systems, business systems (i.e., grant and contract writing systems), and accounting systems. For any obligation funded by both ARRA and non-ARRA Funds, RECIPIENT must record separately the original award amount and the increase to said amount funded by the ARRA Funds.

The Parties hereby agree to fully cooperate with each other in the exercise of their respective responsibilities under the ARRA and this Agreement.

-----FIFTH: PROCUREMENT DUTIES;

At a minimum, THE PARTIES agree to comply with the following in connection with contract awards and administration:

1. THE PARTIES agree to provide appropriate oversight of contracts to ensure outcomes that are consistent with and measurable against RECIPIENT's plans and goals under ARRA and maintain proper documentation of contracts available for local and federal audits.
2. THE PARTIES agree to include terms and conditions in contract documents necessary to avoid unnecessary delays, waste and costs overruns of the related Projects and to achieve effective implementation of ARRA data collection and accountability requirements.
3. THE PARTIES agree that to the maximum extent practicable, contracts using ARRA Funds shall be awarded as fixed-price contracts using competitive procedures used in their regular course of affairs or as provided in paragraph 5.1 above. When not possible or practicable or applicable, and if needed PRIFA shall guide RECIPIENT as to alternative contract types to be used in accordance with ARRA Regulations and any other applicable federal guidance or regulation.
4. THE PARTIES agree to ensure proper oversight of contracts other than fixed price in order to mitigate government's risks and deviations from ARRA goals.

THE PARTIES agree to include terms and conditions in contracts, contract documents, award documents and related communications necessary for effective implementation of ARRA data collection and accountability requirements, including clauses and provisions necessary to clarify that parties entering into contracts with RECIPIENT and award recipients are legally obligated to comply with all ARRA provisions and ARRA Regulations applicable to them, including providing to RECIPIENT and/or the ADMINISTRATION the data that may be required to meet any reporting requirements under ARRA.

THE PARTIES agree to include in its contracts with Contractors and Subcontractors applicable to the prosecution of all work covered by this Agreement and receiving ARRA Funds.

THE RECIPIENT acknowledges, and further agrees to include in agreements with any third party Contractors, that any funding provided through the ARRA that is supplemental to an existing grant is one-time funding.

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-----SIXTH: LEGAL COMPLIANCE;

RECIPIENT shall, at all times, observe and comply with the provisions of all United States and Puerto Rico laws, regulations, applicable local ordinances and ARRA Regulations, guidance and guidelines, and guidance or any other regulations issued by PRIFA for the implementation of ARRA in Puerto Rico, that are applicable to the receipt or use of ARRA Funds or the prosecution of all work receiving ARRA Funds. Particular legal requirements not expressly included in this Agreement and applicable to specific programs or funds, shall also be complied with by the Parties and Subcontractors.

THE PARTIES agree to comply with all aspects of the Federal False Claims Act which, in general, prohibits: (i) knowingly presenting, or causing to be presented to the Government of the United States a false claim for payment; (ii) knowingly making, using, or causing to be made or used, a false record or statement to get a false claim paid or approved by the government; (iii) conspiring to defraud the Government of the United States by getting a false claim allowed or paid; (iv) falsely certifying to the United States the type or amount of property to be used; (v) certifying receipt of property on a document without completely knowing that the information is true; (vi) knowingly buying Government of the United States property from an unauthorized officer of the Government of the United States, and; (vii) knowingly making, using, or causing to be made or used a false record to avoid or decrease an obligation to pay or transmit property to the Government of the United States.

THE PARTIES agree to ensure that none of the funds appropriated or otherwise made available under the ARRA 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 unless (i) there are insufficient quantities available, (ii) such use harms the public interest, or (iii) such use would increase the total cost of the project by more than 25%. Non-compliance with this requirement would only be permitted after obtaining a waiver from the head of the federal agency distributing the funds. PRIFA shall assist RECIPIENT in requesting such waiver when needed.

THE PARTIES agree to require that all laborers and mechanics employed by Contractors and Subcontractors on its projects funded directly by or assisted in whole or in part by and through ARRA, receive payment of not less than the locally prevailing wages for similar projects, as provided under the Davis-Bacon Act, if applicable.

THE PARTIES acknowledge that an employee of any non-federal employer receiving ARRA Funds 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 Board, an inspector general, the Comptroller General of the United States, a member of Congress, a Puerto Rico or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee, (or such other person working for the employer who has 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 reasonably believes is evidence of: (1) gross mismanagement of an agency

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contract or grant relating to ARRA Funds; (2) a gross waste of ARRA Funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA Funds; (4) an abuse of authority related to the implementation or use of ARRA Funds, or (5) a 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 in connection with ARRA Funds.

The Parties will include in contracts with its contractors and subcontractors that they will have to post in the website www.puertoricotrabajo.com all positions for which they intend to hire workers as result of being awarded funds under ARRA. Although ARRA funded projects shall be executed expeditiously, job postings shall be published with reasonable time, within the circumstances, to allow potential candidates to apply for these jobs.

THE PARTIES shall comply before its federal agency sponsor, and shall require from subgrantees and contractors at all tiers that each complies, with the following:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the RECIPIENT, to any person for influencing or attempting to influence an officer or employee of an 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 contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal 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 PARTIES shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance is placed by the federal agencies when transactions are made or entered into with recipients. Submission of this certification is a prerequisite for making or entering into such transactions imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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THE PARTIES hereby agree to also comply with the requirements listed in Annex III, which are incorporated herein by reference.

-----SEVENTH: CONTRACTORS AND SUBCONTRACTORS;

THE PARTIES agree to bind each Contractor and Subcontractor to the applicable terms of ARRA, and shall make sure that such commitments are included in each contract with such Contractors and Subcontractors, including all clauses of Article VI of this Agreement, applicable clauses included in Annex IV and clauses of this Article VII.

THE PARTIES shall also require that: (i) any Subcontractor engaged by it exercises due diligence in the performance of the services for which it was hired; (ii) any Subcontractor shall be a licensed professional, as applicable, with experience in the performance of the work subcontracted to it; (iii) regional firms from as many areas of Puerto Rico as possible are used as often as practicable for the performance of any subcontracted Additional Services or services directly subcontracted by RECIPIENT with ARRA Funds; and (iv) Subcontractors shall make available to PRIFA upon request, all certifications required under Puerto Rico Law and regulations, including tax filing and do-debt certifications, applicable ASUME certifications, Department of Labor and Human Resources certifications, CRIM certifications, good standing certifications, and any other required certification. PRIFA shall also ensure subcontractors are informed of their duty to comply with the Code of Ethics for Contractors of the Commonwealth (Act No. 84 of June 18, 2002); Act No. 428 of September 22, 2004; if applicable, the Engineering Act No. 173 of August 12, 1988, and any other applicable laws and regulations for contracting with the Commonwealth.

THE PARTIES shall be responsible for withholding from Contractors and consultants applicable withholding taxes and delivery of such taxes to the Department of the Treasury on a monthly basis.

THE PARTIES agree to include in its agreements with Contractors and Subcontractors to fulfill obligations under this Agreement, the requirement that each Contractor and Subcontractor awarded or paid with ARRA Funds shall promptly refer to the Task Force, with a copy to the Executive Director of PRIFA, any credible evidence that a principal, employee, agent, Contractor, sub-grantee, Subcontractor, or any other person has taken any action for which such person could be subject to liability under the Federal False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA Funds.

THE PARTIES agree to contractually require each Contractor and Subcontractor receiving ARRA Funds to (i) provide RECIPIENT and PRIFA such information and documents reasonably requested related to the use of ARRA Funds; (ii) consent to any reporting and publication, in any form or media, including in the PR-ARRA Website, by RECIPIENT, PRIFA or the Commonwealth, of such information regarding such Contractor or Subcontractor, the Project in which such Contractor or Subcontractor is involved, or regarding any contract or grant or other arrangement with RECIPIENT, compensated in whole or in part with ARRA Funds, to which such Contractor or Subcontractor is a party; and (iii) agree and acknowledge that each Contractor's and Subcontractor's accounting systems may be subject to inspections by local and federal auditors in connection with the use of ARRA Funds, in each of the instances listed in (i)-(iii), as RECIPIENT, PRIFA or the applicable local or federal agency may determine

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necessary or advisable in order to ensure compliance with, or verify such compliance, by the Government of Puerto Rico and sub-grantees under ARRA, under any ARRA Regulation or which may be necessary or advisable in order for PRIFA and RECIPIENT to discharge its obligations under the PRIFA Act or under ARRA or under any agreement with federal agencies. At a minimum, the information included in Annex I, as such Annex may be amended or supplemented from time to time, shall be provided by Contractors and Subcontractors to RECIPIENT and PRIFA.

-----EIGHT: CERTIFICATION;

THE PARTIES must certify as requested, to the Governor of the Commonwealth, from time to time and in the form required by ARRA, that the uses to the ARRA Funds obtained by THE PARTIES have received the full review and vetting required by law and that they accept responsibility that the investments or uses, as applicable, are in full compliance with ARRA and the ARRA Regulations. Such certification shall include such statements and information reasonably require in order to put the Governor in a position to grant a similar certification in accordance with the requirements of ARRA. In addition, THE PARTIES must certify to the Governor that no ARRA Funds, appropriated or otherwise made available to THE PARTIES, were used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool or in athletic facilities, facilities used for secular or religious worship events or facilities where events are held for which admission fees are charged, or any other use not permitted by the applicable program under which THE PARTIES receive ARRA Funds.

The timing for submittal and any particular requirement in the content of a certification shall be determined by the rules and regulations applicable to each specific program funded by ARRA.

-----NINTH: INDEMNIFICATION;

Each Party (the "Indemnifying Party") will be responsible to the other Party (the "Indemnified Party") for the acts and omissions of the Indemnifying Party's employees, Subcontractors and their agents and employees, and other persons performing obligations hereunder. To the fullest extent permitted by law, each Indemnifying Party shall indemnify, defend with counsel acceptable to the Indemnified Party, and hold harmless the Indemnified Party and its consultants, agents and employees or any of them, from and against all claims, damages, fines, penalties, losses and expenses, including but not limited to attorneys' fees, arising out of, relating to or resulting from: (a) performance of the obligations hereunder, but only to the extent caused in whole or in part by the default, misconduct or negligent acts or omissions of the Indemnifying Party, a Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, or (b) breach or failure to comply with the terms and conditions of this Agreement, unless such claim, damage, fines, penalties, loss or expense is caused in part by the Indemnified Party hereunder (in which case the indemnification shall be reduced in proportion to the damages, fines, penalties, loss or expense caused by the Indemnified Party), or (c) infringement of copyrights and patent rights. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this article. The Indemnified Party shall promptly notify the Indemnifying Party of any such claim, damage, loss or expense

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arising hereunder. In claims against any person or entity indemnified under this section by an employee of the Indemnifying Party, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. The provisions of this section shall survive termination of this Agreement.

-----TENTH: DISPUTE RESOLUTION;

Requests for Remedy. In case any controversy, argument, complaint, claim or dispute arises out of or related to this Agreement, the Parties will abide by Act Number 80 of June 3, 1980, as amended by Act Number 61 of February 17, 2006 ("Act No. 80") and Regulation number 7253 of November 22, 2006, issued thereunder by the Justice Department. To the extent the Commission created under Act No. 80 determines that it does not have jurisdiction to resolve any controversies hereunder, the Parties shall endeavor to solve their disputes by mediation following the spirit of Act No. 80, as follows.

The grievied party ("Grieved Party") may notify its claim in writing to the other party ("Requested Party") including a proposed remedy and details of how such remedy is to be enforced or executed ("Remedy Proposal"). Said Remedy Proposal shall be accepted or denied in writing by the Requested Party within ten (10) days of receipt of the notification. If the Requested Party accepts the Remedy Proposal, the Parties will proceed accordingly. If the Requested Party fails to respond within said term, such inaction will be deemed to constitute a denial or rejection of the Remedy Proposal. In any of such rejection cases, the Parties shall endeavor to solve their disputes by mediation. The parties shall have ten (10) days from the earlier of the date the Requested Party notified in writing its rejection of the Remedy Proposal or the date it was deemed rejected, to select a mutually agreeable mediator and the mediation procedure to be followed.

The Parties shall deliver in writing to the mediator and the other Party their respective positions as to the controversy, arguments, complaints, claims or disputes, with a detailed description of the facts to be supported with testimony and documentary evidence, if applicable, and the names of the persons that will testify or should be available during the process. Mediator fees shall be shared by both parties in the same amount.

If within the ten (10) days period referred to in the last sentence of the first paragraph in (a) above the parties have not agreed as to a mediator or as to the mediation procedure, the mediation shall be conducted before a mediator certified by the Bureau of Alternative Methods for Dispute Resolution of the Supreme Court of Puerto Rico, to be appointed by the Bureau upon request of any of the Parties to said Bureau. Said mediator shall determine the process to be followed.

Complaints or Judicial Remedy. If all the matters in controversy are not resolved under Act 80 or by mediation, then all such unresolved controversies, claims, counter claims, disputes and any other matter arising between the Parties in

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connection with or relating to this Agreement, will be decided by the General Court of Justice of Puerto Rico.

-----ELEVENTH: MISCELLANEOUS;

Term. This Agreement shall remain in full force and effect from the Effective Date until all ARRA Funds are received and used in their entirety by RECIPIENT and RECIPIENT has been audited by the governmental entities in charge of auditing the uses of ARRA Funds received by RECIPIENT and no further action is required of RECIPIENT pursuant to ARRA or as a result of such audits. In any case, ARRA funds are expected to be available until 2012, which date may vary from program to program. Therefore, the Parties agree to enter into this Agreement until August 30, 2012. The Term shall be automatically renewed on a yearly basis if at September 30, 2012 there are still disbursements pending, funds being used or ongoing audits in connection with ARRA funds received by RECIPIENT.

No Third Party Rights. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the Parties hereto, any right, remedy or claim, legal or equitable, under or by reason of this Agreement, and all its provisions are intended to be and are for the sole and exclusive benefit of the Parties hereto.

Effect of Partial Invalidity. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein. In case any covenant, stipulation, obligation, or agreement contained in this Agreement shall for any reason be held to be contrary to law, then such covenant, stipulation, obligation or agreement shall be deemed to be a covenant, stipulation, obligation or agreement of RECIPIENT only to the full extent permitted by law.

Effect of Covenants. All covenants, stipulations, obligations and agreements of RECIPIENT and PRIFA contained in this Agreement are subject to law and then existing agreements, judicial orders and other legal obligations of RECIPIENT and PRIFA, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time and upon any officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Governing Law. This Agreement shall be governed by applicable laws of the United States and the laws of the Commonwealth of Puerto Rico.

Other. Up to the execution of this Agreement, EEA, PRIFA and RECIPIENT recognize that their acts in connection with use and reporting requirements of ARRA Funds have taken into consideration the Legislature's design which has entrusted to PRIFA the obligation to manage the reporting requirements under ARRA and assisting Government Entities to ensure the proper use of the funds.

Notice Provisions. All notices, documents and other communications to be delivered pursuant to this Agreement between SUBGRANTEE and RECIPIENT shall be directed:

If to SUBGRANTEE:

Department of State
P.O. Box 9023271
San Juan, PR 00902-3271
Attention: Vanessa Viera Rabelo, Administrator

If to the ADMINISTRATION:

Energy Affairs Administration
P.O. Box 41314
San Juan, PR 00940
Attention: Luis M. Bernal Jiménez, Executive Director

Additional Documents. THE PARTIES hereby agree to diligently cooperate with all requests made by each other to immediately execute any and all documents and provide all information that may be required to comply with applicable laws and regulations.

Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document.

----TWELFTH: Effectiveness and Duration: This contract will become effective on the day of its execution through **August 30, 2012**. Nevertheless, this contract may be terminated by the **ADMINISTRATION** by giving a thirty (30) day written notice to the other party of its intention to do so. The rights, duties and responsibilities of the **ADMINISTRATION** and **SUBGRANTEE** shall continue in full force and effect during the notice period.----

-----THIRTEENTH: It is understood that this contract is the sole agreement between the parties herein with regard to the services covered hereby and may not be changed orally, but may be amended in writing, by mutual agreement of the parties. Any amendment to this contract shall be subject to the approval of the necessary government agencies.-----

-----FOURTEENTH: Negligence or Default: The negligent fulfillment of its obligations or the default of same by **SUBGRANTEE** will be considered as a breach of this contract and will constitute sufficient cause for the **ADMINISTRATION** to declare the same terminated and, without limitation and not withstanding any rights to the contrary, the **ADMINISTRATION** will be relieved or discharged of any obligation or responsibility thereby arising.-----

----FIVETEENTH: Responsibility of SUBGRANTEE: Nothing in this contract shall constitute **SUBGRANTEE** as an employee of the **ADMINISTRATION** for any purpose whatsoever, and he shall have no right to bind or obligate the **ADMINISTRATION** in any manner whatsoever. **SUBGRANTEE** shall follow the best practice and most recent standards.-----

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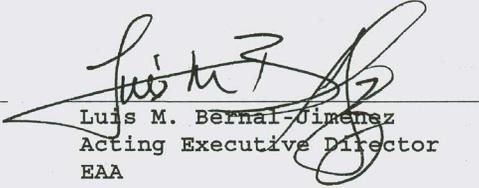
----IN WITNESS WHEREOF, Energy Affairs Administration has caused this Agreement to be executed by its Executive Director and Department of State has caused this Agreement to be executed by its Deputy Secretary, in San Juan, Puerto Rico all as of the October 28, 2010.-----

Department of State

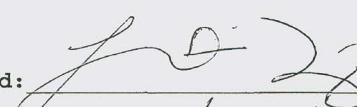
ADMINISTRATION

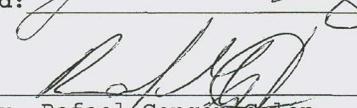


Vanessa Viera-Rabelo
Deputy Secretary
Department of State



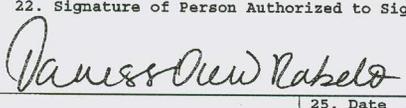
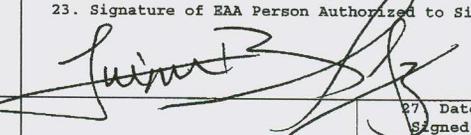
Luis M. Bernal-Jimenez
Acting Executive Director
EAA

Revised: 

User: 

Sr. Rafael Gongon Colon
Program Manager EECBG

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Puerto Rico Energy Affairs Administration ASSISTANCE AGREEMENT			
1. Award Number: 2	2. Modification No. -	3. Effective Date: 09/30/2010	4. Funding Opportunity Number: DE-FOA-0000013
5. Awarded To: Puerto Rico State Department	6. Sponsoring Office: Energy Affairs Administration PO BOX 41314 San Juan PR 00940-1314	7. Period of Performance: Initial Date: 09/30/2010 Final Date: 09/30/2011 (12 months)	
8. Type of Agreement: <input checked="" type="checkbox"/> Sub - Grant <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Other	9. Authority: American Recovery and Reinvestment Act 2009 DOE Award to EAA #DE-EE0000945	10. Funding Document No: DE-FOA-0000013	
11. Remittance Address: PO Box 9023271 San Juan, PR 00902-3271	12. Total Amount: EEA Share: \$600,000.00 Cost Share: \$0,000.00 Total: \$600,000.00	13. Funds Obligated: This Action:\$600,000.00 Previous Action: \$0.00.00 Total:\$600,000.00	
14. Principal Investigator: Mr. José Ortiz Valladares Phone: (787) 722-2121 x. 1352/1475	15. EAA Project Manager: Mr. Rafael Gongón Phone: (787) 999-2200 x.2888	16. Program Administrator: PR Energy Affairs Administration PO BOX 41314 San Juan PR 00940-1314	
17. Submit Payment Request To: PR Energy Affairs Administration PO BOX 41314 San Juan PR 00940-1314	18. Paying Office PR Energy Affairs Administration PO BOX 41314 San Juan PR 00940-1314	19. Submit Reports To: See Reporting Requirements Section for details	
20. Accounting and Appropriation Data: EECBG-Sub Grant to Government Agencies			
21. Description of Project: Energy Efficiency and Conservation Measurements at PR State Department			
Recipient		Energy Affairs Administration of Puerto Rico (EAA)	
22. Signature of Person Authorized to Sign 	23. Signature of EAA Person Authorized to Sign 		
25. Date Signed Oct 25, 2010 Vanessa Viera Rabelo Chief Deputy Secretary of State	27. Date Signed Oct 29, 2010 Luis M. Bernal Executive Director		

CONTINUATION SHEET		Reference Number of Document Being Continued		Page	Of
				1	1
NAME OF SUB-GRANTEE					
Puerto Rico State Department					
Item No. (A)	Projects /Services to be implemented (B)	Quantity (C)	Unit (D)	Unit Price (E)	Amount (F)
1	Lighting Retrofit for the Real Intendencia Building	1	LS	\$62,500.00	\$62,500.00
2	Lighting Retrofit for the Diputación Provincial Building	1	LS	\$43,000.00	\$43,000.00
3	Replacement of the Air Conditioning Chiller for the Real Intendencia Building	1	LS	\$179,600.00	\$179,600.00
4	Replacement of the Air Conditioning Chiller for the Diputación Provincial Building	1	LS	\$152,000.00	\$152,000.00
5	Installation of Lighting Timers and Occupational Sensors at Real Intendencia Building	1	LS	\$54,500.00	\$54,500.00
6	Installation of Lighting Timers and Occupational Sensors at Diputación Provincial Building	1	LS	\$20,000.00	\$20,000.00
7	Replacement of Computer Monitors at Real Intendencia Building	1	LS	\$16,200.00	\$16,200.00
8	Replacement of Computer Monitors at Diputación Provincial Building	1	LS	\$6,200.00	\$6,200.00
9	Installation of thermostats for the areas cooled with fan coils at the Real Intendencia Building	1	LS	\$23,250.00	\$23,250.00
10	Installation of thermostats for the areas cooled with fan coils at Diputación Provincial Building	1	LS	\$10,000.00	\$10,000.00
11	Engineering, Design and Project Management for the Implementation of the Energy Conservation Projects	1	LS	\$32,750.00	\$32,750.00
	Total				\$600,000.00

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STATEMENT OF PROJECT OBJECTIVES

Puerto Rico Department of State

Commonwealth of Puerto Rico Energy Efficiency and Conservation Block Grant

A. PROJECT OBJECTIVES

The purpose of this award is to implement the Recipient's project to optimize the energy consumption at their owned building and facilities, specified on the Assistance Agreement Projects / Services to be implemented section, to reduce energy consumption and costs through efficiency improvements in the facilities systems, along with creating jobs.

B. PROJECT SCOPE

The scope for this award is the implementation of the energy consumption optimization project and all supporting activities and documentation necessary for the proposed project activities as specified on the attached EECEG Activity Worksheet.

C. PROJECT MANAGEMENT AND REPORTING

Reports and deliverables will be provided in accordance with Energy Affair Administration (EAA) Assistance Reporting Checklist, as indicated in the following page.

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Energy Affairs Administration of Puerto Rico			
Reporting Checklist and Instructions			
1. Award No. 2		2. Program/ Project Title: EECBG - Sub Grant to Government Agencies	
3. Recipient: Puerto Rico Department of State			
4. Reporting Requirements:	Frequency	# of Copies	Addressees
A. Monthly Reports	M	1	PR Energy Affairs Administration PO Box 41314 San Juan, PR 00940-1314
B. Final Report	F	1	PR Energy Affairs Administration PO Box 41314 San Juan, PR 00940-1314
C. Quarterly Report	Q	1	PR Energy Affairs Administration PO Box 41314 San Juan, PR 00940-1314
5. Frequency Codes and Due Dates:			
M - Within 10 days after the ends of each calendar month.			
F - 20 working days after completion of the project work.			
Q - Within 10 days after the end of each calendar quarter.			
6. Special Instruction:			
Refer to Attachment H in page 73 of the FOA to see minimum required information to be included in the monthly report.			
Refer to Attachment I in page 74 of the FOA to see minimum required information to be included in the final project report.			
Refer to Attachment J in page 76 of the FOA to see minimum required information to be included in the quarterly report.			
Refer to the FOA for other required deliverables.			

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EAA ASSISTANCE REPORTING INSTRUCTIONS

D. MONTHLY REPORT

The Government Agency will report monthly to the EAA the progress of the projects. The Monthly Reports must be submitted by each Government Agency receiving an EECBG Sub-Grant to the EAA no later than ten (10) days after the end of each calendar month. The monthly reports should include, as a minimum, all information listed below and all necessary report requirements as per Standard Project Management practices.

- Project Description
- General progress of the project work
- Activities performed during the month
- Accomplishments and Achievements during the month
- Project Schedule Update
- Comparison of how the actually employed resources matched planned levels
- A forecast of time to complete each work activity
- Description of actual or potential delays, including related causes, and the steps taken or anticipated to mitigate their impact
- Changes to activity logic, new activities and sequences as a result of executed contract changes, and changes to the Critical Path
- Identification of, and accompanying reason for, any activities added or deleted since the last Narrative Progress Report
- Identification of any quality control problems
- Variance of Project budget and project completion cost forecast
- Any expected task, budget or schedule completion concerns
- Work Plan for the following month

E. FINAL REPORT

The Government Agency must submit a Final Report to the EAA. The final report is due at the EAA Office not later than twenty (20) working days after completion of the project work. The final report should include, as a minimum, all information listed below and all necessary report requirements as per Standard Project Management practices.

- Project Description
- Accomplishments and Achievements of the project
- Final Project cost
- Variance of Final Project Cost from Approved Project Budget
- Total required time to complete the project work
- Jobs created and/or retained
- Energy savings on a per dollar invested basis
- Renewable energy capacity installed
- Greenhouse gas emissions reduced
- Funds leveraged (if any)
- Photos of the project (before and after improvements)
- Final Acceptant Tests results
- Final Inspection and Acceptance Report

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- List of residual inventory of unused supplies if any have an aggregate value in excess of \$ 5,000.00; if any, please indicate if:
 - o The supplies will be used on another state or federally sponsored activity (list activity and agency); or
 - o The supplies will be sold or retained for use on non-Federally sponsored activities and the Recipient will compensate EAA for its share of the sales proceeds (or estimate of current fair market value). If so, attach a list of the supplies with the following information:
 - ✓ Sale proceeds or estimate of current fair market value
 - ✓ Percentage of Federal participation
 - ✓ Federal share
 - ✓ Selling and handling allowance
 - ✓ Amount to be remitted to EAA

F. QUARTERLY REPORT

Section 1512 of the Recovery Act requires reports on use of funds. No later than ten (10) days after the end of each calendar quarter, the Government Agency that received EECBG Sub-Grant funds from the EAA shall submit a quarterly report. The quarterly report should include all necessary report requirements mentioned below:

- 10) The total amount of recovery funds received from that EAA;
- 11) The amount of recovery funds received that were expended or obligated to projects or activities; and,
- 12) A detail list of all projects or activities for which recovery funds were expended or obligated, including:
 - e. The name of the project or activity;
 - f. A description of the project or activity;
 - g. An evaluation of the completion status of the project or activity; and,
 - h. An estimate of the number of jobs created and the number of jobs retained by the project or activity.
- 13) Expenditures:

Accurate records should be kept and reported on project expenditures for all EECBG ARRA funded efforts. The specific information to be gathered and tracked is listed below. It will be the same for all project types:

- i. Total funds authorized by EAA as of the reporting period;
- j. Total funds received from EAA as of the reporting period;
- k. Expenditures for project activities (total cash disbursed);
- l. Expenditures for administration (total cash disbursed);
- m. Expenditures for evaluation (total cash disbursed);
- n. Total amount of unpaid Commitments;

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- o. Leveraged funds (recipient share of actual cash disbursements for the reporting period); and,
- p. Cash on hand of received funds from the EAA.

14) Metrics Activity:

The key metrics to be reported will vary by project type. The minimum information to be reported, by project activity type, is reported below.

- b. Building Retrofits
 - i. Number of buildings retrofitted, by sector
 - ii. Square footage of buildings retrofitted, by sector

15) Energy Savings (KW-H equivalents)

- g. Annual reduction in natural gas consumption (mmcf) by sector and end-use category
- h. Annual reduction in electricity consumption (MWh) by sector and end-use category
- i. Annual reduction in electricity demand (MW) by sector and end-use category
- j. Annual reduction in fuel oil consumption (gallons) by sector and end-use category
- k. Annual reduction in propane consumption (gallons) by sector and end-use category
- l. Annual reduction in gasoline and diesel fuel consumption (gallons) by sector and end-use category

16) Job Creation/Retention

- d. Number
- e. Type
- f. Duration

17) Renewable Energy Capacity and Generation

- e. Amount of photovoltaic generating capacity installed (MW)
- f. Amount of electricity generated from photovoltaic systems (MWH)
- g. Amount of electric generating capacity from other renewable sources installed (MW)
- h. Amount of electricity generated from other renewable sources (MWH)

18) Emissions Reductions (tons) (CO2 equivalents)

- b. Carbon monoxide

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SPECIAL TERMS AND CONDITIONS

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1. 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 Energy Affairs Administration (EAA) for guidance.

2. AWARD AGREEMENT TERMS AND CONDITIONS

This award/assistance agreement consists of the Assistance Agreement, plus the following:

- f. Special Terms and Conditions for use in most grants.
- g. Attachments
 - a. Statement of Project Objectives
 - b. Reporting Checklist and Instructions
 - c. EECBG Activities Worksheets
 - d. Budget Pages
 - e. Property deeds of the facilities to be optimized by the Government Agency with this award
- h. Program regulations
- i. Special provisions related to work funded under American Recovery and Reinvestment Act of 2009 (May 2009) (Clauses 18 through 24).
- j. Grant Application package as approved by EAA.
- k. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at: http://management.energy.gov/business_doe/1374.htm
- l. This award is a fixed obligation grant. The designated Authorized Representative of the Recipient shall certify in writing to the EAA, Contracting Officer at the end of the project that the activities were completed or the level of effort expended, however should the activity or effort not be carried out, the Recipient would be expected to make appropriate reimbursements.

3. AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through hand delivered, mailed or emailed systems used by the EAA, constitutes the Recipient's acceptance of the terms and conditions of the award. Acknowledgement via hand delivered, mailed or emailed by the Recipient's authorized representative constitutes the Recipient's signature.

4. PAYMENT PROCEDURES

- c. Method of Payment. Payment will be made by reimbursement through the EAA system.
- d. Adjusting payment requests with invoice. You must request funds delivering the invoice to EAA of contracted services provided to the Government Agency. The EAA will reimburse funds only for services that have been provided and for completed work.

- e. Payments. All payments are made by electronic funds transfer to the bank account identified on the EAA Bank Information Form that the Government Agency filed with the Government Bank of Puerto Rico.

5. MAXIMUM OBLIGATION

The maximum obligation of the EAA is limited to the amount shown on Assistance Agreement Cover Page (Block 12). The Government Agency is required to complete the Scope of Work of the project with the total amount obligated. Any additional funds required to complete the Scope of Work of the project due to a mismanagement of the awarded funds or due to an overrun will be the Government Agency sole responsibility to obtain the necessary funds to finalize the project in a satisfactorily manner to the EAA Project Manager.

6. LIMITATIONS ON USE OF FUNDS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools. Furthermore, by accepting funds under this award, you agree that all of the funds obligated on the award will be expended for optimize the energy consumption at the buildings and facilities owned by the Government Agency only. Property deeds of the facilities to be optimized are attached to this award.

7. REIMBURSABLE INDIRECT COSTS AND UNUSED FUNDS

- a. The Recipient is expected to manage their final negotiated project budgets, including their indirect costs and indirect costs. EAA recognizes that the inability to obtain full reimbursement for indirect or indirect costs means the Recipient must absorb the under recovery.
- b. If actual allowable indirect and/or fringe benefit costs are less than those budgeted and funded under the award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

8. USED OF PROGRAM INCOME

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

9. STATEMENT OF FEDERAL STEWARDSHIP

DOE/EAA will exercise normal Federal/Local 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.

10. SITE VISITS

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

11. REPORTING REQUIREMENTS

c. Requirements. The reporting requirements for this award are identified on the Assistance Reporting Checklist, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards.

d. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

12. PUBLICATIONS

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

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

Acknowledgment: "This material is based upon work supported by the Department of Energy, Energy Efficiency and Conservation Block Grant, under Award Number(s) [enter the award number(s)]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific

commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

13. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

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

14. HISTORIC PRESERVATION CLAUSE

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the Recipient must contact the State Historic Preservation Officer (SHPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>.

The EAA/DOE Contracting Officer shall consider compliance with Section 106 of the NHPA complete only after the Recipient has submitted adequate background documentation to the SHPO for its review, and the SHPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Section 110(k) of the NHPA applies to DOE funded activities, therefore, Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

15. LOBBYING RESTRICTIONS

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

16. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. This restriction does not preclude Recipient from: (1) purchasing any necessary

equipment or related materials; (2) conducting assessments, studies and other relative administrative work for the buildings and facilities retrofit project.

If you move forward with activities that are not authorized for Federal funding by the EAA/DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to EAA/DOE initiating the NEPA process. Additionally, the EAA requires that the Recipient fills the proper Forms of the Puerto Rico Environmental Quality Board for the project.

17. WASTE STREAM

Prior to the expenditure of Federal funds to dispose of sanitary or hazardous waste, the Recipient is required to provide documentation to the EAA Project Manager demonstrating that it has prepared a disposal plan for sanitary or hazardous waste generated by the proposed activities. Sanitary or hazardous waste includes, but is not limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc.

The EAA Project Manager shall consider compliance with this clause complete only after the Recipient has submitted adequate documentation to EAA for its review, and EAA has provided written approval to the Recipient of its proposed plan to dispose of its sanitary or hazardous waste.

18. PROJECT SIGNAGE

The Recipient is required to install a sign at the project site to identify the project as an EECBG Program project sponsored by the Puerto Rico Energy Affairs Administration with the ARRA funds received from the DOE. The art of the sign will be provided by the EAA to the Recipient.

The cost of the sign is part of the project administrative costs. The sign will be removed at the completion of the project work.

19. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

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

Preamble

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

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the Recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the EAA/DOE Contracting Officer for reconciliation.

Definitions

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

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or Recipient, as the case may be, if the contractor, subcontractor, grantee, or Recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or

indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

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

Special Provisions

K. Flow Down Requirement

Recipients must include these special terms and conditions in any sub-award.

L. Segregation of Costs

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

M. Prohibition on Use of Funds

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

N. Access to Records

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

- 3) to examine any records of the contractor or grantee, any of its subcontractors or sub-grantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or sub-grant; and

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- 4) to interview any officer or employee of the contractor, grantee, sub-grantee, or agency regarding such transactions.

O. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not disclose to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, EAA 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.

P. Protecting State and Local Government and Contractor Whistleblowers

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to: Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- Gross management of an agency contract or grant relating to covered funds;
- A gross waste of covered funds;
- A substantial and specific danger to public health or safety related to the implementation or use of covered funds;

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- An abuse of authority related to the implementation or use of covered funds; or
- As violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

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

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

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration:

- Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre-dispute arbitration agreement. No pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.)

Q. Reserved

R. False Claims Act

Recipient shall promptly refer to the EAA any credible

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

S. Information in Support of Recovery Act Reporting

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

T. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until thirty (30) months after the award date.

U. Certifications

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

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

- e. The EAA is required to request to the Recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- f. The EAA reports are due no later than ten (10) calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.
- g. Recipients and their first-tier sub-sub-recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with

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Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

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

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

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

*Special Note: Definitization of the Provisions entitled, "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS - SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" and "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) - SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" will be done upon definition and review of final activities.

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

g. *Definitions.* As used in this award terms and conditions

5) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been:

iii. Processed into a specific form and shape; or

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

6) *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,

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and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

- 7) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
 - 8) *Domestic preference* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.
- h. The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that:
- 4) 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;
 - 5) 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
 - 6) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
- i. Request for determination of inapplicability of Section 1605 of the Recovery Act. (1)(i) Any Recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including:
- 1) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - 2) Unit of measure;
 - 3) Quantity;
 - 4) Cost;
 - 5) Time of delivery or availability;
 - 6) Location of the project;
 - 7) Name and address of the proposed supplier; and

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- 8) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b) (3) of this section.
- iv. A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
 - v. The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
 - vi. Any Recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the Recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the Recipient does not submit a satisfactory explanation, the award official need not make a determination.
- j. If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is no availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).
- k. Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.
- l. Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of	Quantity	Cost (\$)
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	Measure		
Item 1:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

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

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

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

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

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25. SPECIAL RECOVERY ACT AND TRANSACTIONS LISTED IN
SCHEDULE OF EXPENDITURE IF FEDERAL AWARDS AND RECIPIENT
RESPONSIBILITIES FOR INFORMING RECIPIENT

e. To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, Recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at

<http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

f. For Recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF- SAC) required by OMB Circular A-133. OMB Circular A-133 is available at

<http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

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

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

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26. DAVIS-BACON ACT REQUIREMENTS

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall

mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from EAA and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Recipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

6) Definition:

a. Site of the work means:

- i. The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and
- ii. The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is
 1. Located in the United States; and
 2. Established specifically for the performance of the award or project;
- iii. Except as provided in paragraph (iv) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided:
 1. They are dedicated exclusively, or nearly so, to performance of the award or project; and
 2. They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;
- iv. Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

7) Wages

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- a. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.
- b. 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 (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
- c. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- d. The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) 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.

8) Classifications of Laborers or Mechanics

- a. The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
- i. The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - ii. The classification is utilized in the area by the construction industry.
 - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- b. If the 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 thirty (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 of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs 3)b and 3)c of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is

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performed in the classification.

- 9) Whenever the minimum wage rate prescribed in the award 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.
- 10) 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.

Rates of Wages - Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (<http://cfr.vlex.com/vid/5-2-definitions-19681309>) will be performed during the course of the project, the Recipient shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the Recipient's determination, the Recipient must receive Contracting Officer approval to proceed with such activity, and must comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed. If the Contracting Officer does not concur with the Recipient's determination, the Contracting Officer will so notify the Recipient in writing.

27. RECIPIENTS' REQUIREMENTS REGARDING THE DAVIS-BACON ACT

- a. On behalf of the Department of Energy (DOE), Recipient shall perform the following functions regarding the Davis-Bacon Act:
 - i. Obtain, maintain, and monitor all DBA certified payroll records submitted by Sub-sub-recipients and Contractors at any tier under this award;
 - ii. Review all DBA certified payroll records for compliance with DBA requirements including applicable DOL wage determinations;
 - iii. Notify DOE of any non-compliance with DBA requirements by Sub-sub-recipient or Contractors at any tier, including any non-compliance identified as the result of reviews performed pursuant to paragraph (b) above;
 - iv. Address DBA any Sub-sub-recipient's any Contractor's non-compliance issues; if DBA non-compliance issues

- cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
- v. Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
 - vi. Perform services in support DOE investigations of complaints filed regarding non-compliance by Sub-sub-recipients and contractors with DBA requirements;
 - vii. Perform audit services as necessary to ensure compliance by Sub-sub-recipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
 - viii. Provide copies of all records upon request by DOE or DOL in a timely manner.
- b. All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.
- c. In the event of, and in response to any freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.

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