



State Energy Program
Energy Efficiency Projects for Commercial, Industrial
and Large Nonprofit Sectors

Solicitation No. 2010SEPComIndNonprofit1

**Funded through the American Recovery and Reinvestment Act
of 2009**

Issue Date: July 9, 2010

Application Closing Date: 2:00 p.m., August 11, 2010

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Energy Efficiency Projects for Commercial, Industrial and Large Nonprofit Sectors
Notice of Funding Opportunity and Invitation to Submit Applications

Announcement Type	Notice of Funding Opportunity and Invitation for Applications under the State Energy Program issued by the North Carolina Energy Office (the "SEO"), a division of the North Carolina Department of Commerce (the "Agency").
Eligible Projects	Energy efficiency upgrades for 1) Commercial, 2) Industrial and 3) Qualified Non-Profit facilities. For the purposes of this Funding Opportunity, "Qualified Non-Profit" means a facility that houses a registered 501(c)(3) entity and that includes at least one building of at least 20,000 square feet. See the eligibility requirements in the Introduction to this Funding Opportunity for details.
Eligible Applicants	Owners of 1) Commercial, 2) Industrial and 3) Qualified Non-Profit facilities.
Statute, Regulations, Agreements and Guidelines	This Funding Opportunity is funded by monies made available under the American Recovery and Reinvestment Act, Public Law 111-5 (ARRA) State Energy Program Formula Grants (Funding Opportunity Number: DE-FOA-0000052). The State Energy Program Guidelines are set forth in Appendix E – State Energy Program Guidelines hereto, and are incorporated into this Funding Opportunity by reference as though set forth in their entirety herein. Capitalized terms in this Funding Opportunity have the meanings ascribed to them in the Guidelines. This Funding Opportunity is governed by ARRA, the agreement between the Agency and the U.S. Department of Energy (the "DOE"), identified as DE-EE0000157, 10 CFR Part 420, 10 CFR Part 600 and federal and State guidelines issued thereunder.
Solicitation Period	July 9, 2010, to August 11, 2010
Project Completion Dates	All Projects funded under this Funding Opportunity must be concluded by December 30, 2011.
Closing Date	The last time and date for receipt of Applications under this Funding Opportunity is 2:00 p.m., August 11, 2010. The SEO must receive all Application materials (electronic and paper copies) on or before 2:00 pm on the Closing Date. No Applications or supplemental materials submitted in response to this Funding Opportunity will be accepted after 2:00 pm on the Closing Date.
Maximum Award Amount	\$500,000. Applicants are eligible for only one Award under this Funding Opportunity. If an Applicant wishes to seek

	<p>funding for more than one Project, the Applicant must include all Projects in one Application. See additional details in Funding Objectives. Only Projects with a minimum scope of \$100,000 will be considered.</p>
Leveraged Funds	<p>Leveraged funds are optional but will be considered in scoring Proposals.</p>
Funding Available Under This Funding Opportunity	<p>The maximum amount of funding available for all Awards made under this Funding Opportunity is approximately \$5 million.</p>
Questions About This Funding Opportunity	<p>To ensure fairness, questions relating to the intent and/or content of funding objectives must be submitted via fax or e-mail during the Solicitation Period, and answers will be posted periodically on the SEO Web site, www.energync.net during the Solicitation Period. Questions should be directed to Nichele Parker, Project Manager, at nparker@nccommerce.com or (919) 733-2953 (fax) before 2 pm, July 30, 2010. No questions will be answered regarding Application status. Information about Applications will not be available until final selections are announced.</p>
Notice of Receipt	<p>An acknowledgement of an Application receipt will be sent by automatic reply e-mail, or in the case of an Application submitted only in paper format pursuant to a waiver of electronic submission, a notice of receipt will be mailed within 30 days of the date of receipt.</p>

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Introduction

The North Carolina State Energy Office (SEO) is soliciting proposals from owners of commercial, industrial, and Qualified Non-Profit facilities. Projects must use commercially available technologies that reduce energy consumption, reduce petroleum consumption, reduce costs and reduce emissions.

Funds for this Program come from the American Recovery and Reinvestment Act of 2009 and are intended to result in significant and sustained job creation and energy efficiency. The SEO is requesting Projects that are cost-effective and can be quickly implemented while also attaining the job creation and energy efficiency goals. Grantees are required to use competitive processes to the maximum extent possible (see the requirements related to procurement in the Appendices and 10 CFR Part 600). Contracts that seek to waive competition must be approved by the SEO.

The focus of this Funding Opportunity is to reduce energy consumption and provide jobs or retain existing jobs. First, building retrofits must result in sustainable energy savings for the occupants and owners of the buildings. The successful Applicant must manage and monitor the retrofit work, verify energy savings and verify economic benefits including job creation and retention. Examples of projects would include but is not limited to: solar electricity/photovoltaic – appropriately sized system or unit on existing rooftops and parking shade structures; Solar thermal – system must be 20 kW or smaller; or installation of energy efficient lighting in existing buildings.

The SEO has approximately \$5 million available for selected awardees. The minimum funding amount considered will be \$100,000, and the maximum award amount will be \$500,000. Multiple proposals may be submitted by an Applicant, but the maximum amount each Applicant can receive is \$500,000. Only approved amounts will be awarded. See Eligibility guidelines for additional information.

American Recovery and Reinvestment Act of 2009

The State Energy Office (SEO) offers this Funding Opportunity as part of the federal American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (ARRA or Recovery Act) to encourage energy conservation and economic investment in energy technologies. ARRA and U.S. Department of Energy (DOE) guidelines also require that projects adhere to a number of reporting and project implementation standards that are outlined below. To the extent possible, this Funding Opportunity has listed the most current requirements. However, Applicants who receive Awards should be aware that additional requirements may be added by the federal government and by the Office of Economic Recovery and Investment (OERI).

Projects under this Funding Opportunity will be funded by the Recovery Act. The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Recovery Act gives preference to activities that can be started and completed expeditiously. Accordingly, special consideration will be given to projects that promote and enhance the objectives of the Recovery Act, especially job creation and preservation and economic recovery.

Be advised that special terms and conditions apply to projects funded by the Recovery Act relating to, but not limited to, the following:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Access to records by the Inspectors General, Government Accountability Office, DOE, State Auditors Office and the Office of Management and Budget (OMB);
- Prohibition on use of funds for gambling establishments, aquariums, zoos, golf courses or swimming pools;
- Ensuring that Buy American Provisions are followed;
- Ensuring wage rates comply with the Davis-Bacon Act and are comparable to those prevailing on projects of a similar character; and
- Protecting whistleblowers and requiring prompt referral of evidence of a false claim to an appropriate inspector general and the posting of whistleblowers rights in the Grantee's work place and the Project location.
- Competitive processes are required when purchasing goods or services using ARRA funds.

Details regarding the requirements applicable to funding under this Funding Opportunity are located in the Appendices.

There are numerous guidance documents available to the public to assist the Applicant in complying with the applicable terms and conditions of the Award. It is incumbent upon the Applicant to consult the DOE Web site, www.energy.gov, the OMB Web site <http://www.whitehouse.gov/omb/>, the federal Recovery Web site, www.recovery.gov, and the North Carolina Recovery Web site, www.ncrecovery.gov, regularly to keep abreast of guidance and information as it evolves. Recipients of funds under this Funding Opportunity are responsible for compliance with all requirements and costs associated with funding. No additional funding will be provided under the Award.

Recipients of funding under this Funding Opportunity must comply with all applicable requirements of federal, State and local laws, rules, regulations, DOE Award Agreement DE-EE0000157, policy and guidance issued by the DOE, the OMB, the U.S. Department of Labor (DOL), the Environmental Protection Agency (EPA), the Advisory Council on Historic Preservation (ACHP) and the OERI. Given the rapidity with which funds will be disbursed under the Recovery Act and the subsequent development of implementation requirements, Grantees are subject to changes to the requirements that may, from time to time, be issued subsequent to issuance of this Funding Opportunity by implementing federal and State agencies, through directives or otherwise, as they may apply to the recipient's funding and related performance. Recipients are required to reflect all applicable requirements in their agreements with subrecipients, contractors, and subcontractors at any tier to ensure compliance with the requirements.

Be advised that Recovery Act funds may 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 OMB guidance. Recovery Act funds awarded under this Funding Opportunity may not be commingled with any other funds. Recipients of funds from sources other than the Recovery Act must keep separate records for Recovery Act funds and must ensure those records comply with the requirements of the Recovery Act. Funding provided through the Recovery Act that is supplemental to an existing grant is one-time funding.

Pursuant to OERI Management Directives 3, 3(a), and 3(b), applicants who are political sub-divisions of the state are required to use the state [Interactive Purchasing System](#) for any purchase of goods or services using ARRA funds in excess of \$5,000. Applicants who are non-state entities receiving ARRA funds under this Funding Opportunity should be aware that they are required to use and document transparent competitive processes approved by SEO for the procurement of goods and services when using ARRA funds.

Applicants should be aware that federal guidance on implementation of Projects and reporting is regularly updated. Grantees will be responsible for complying with current and future requirements related to the Award. The SEO recognizes the tenuous nature of the above statement. The SEO will help Grantees in this and other Programs to comply with the applicable requirements. The intent of the SEO is to utilize ARRA funds in a way that stimulates the economy, builds businesses and saves energy. This can only be accomplished in a cooperative environment.

Eligibility Requirements

Eligibility for this Funding Opportunity is open to owners of commercial, 2) industrial and 3) Qualified Non-Profit facilities. Eligible Applicants may receive no more than one Award during this Solicitation Period for this Funding Opportunity.

In addition, proposed Projects **must** meet the following criteria:

1. The Project activities must be undertaken in North Carolina.
2. The Applicant may not apply for a second Award for activity which the Applicant already has received an Award under a previous Funding Opportunity.
3. An Applicant that, in the judgment of the SEO, has failed to correct a material breach of a Grant Agreement under any program administered by the SEO, is ineligible to submit an application.
4. An Applicant who is debarred, suspended or otherwise excluded from or ineligible for participation in federal or State financial assistance activities is ineligible for an Award.
5. The Applicant must be current on all tax obligations to the local, State and federal governments.
6. Only Applications for funding in excess of \$100,000 will be considered. Applications including multiple Projects, must have an aggregate value of \$100,000 in order to be considered.

Please note that only Projects that are categorically excluded from the National Environmental Policy Act (NEPA) as determined by the SEO and/or the DOE and that do not require a full environmental assessment or environmental impact statement are eligible for an Award under this Funding Opportunity. Please see additional NEPA requirements in the Required Forms section of the Application Requirements.

Applicants should note that the State requires compliance with self-dealing rules for Grantees and their contractors and subcontractors. These rules require, among other things, that no one with direct lineal relations may receive incentive payment. For example, the mother, father, brother, sister, son or daughter of a contractor working in this Program cannot receive Awards, contracts and subcontracts.

Funding Objectives

This competitive Funding Opportunity will provide funding for eligible Applicants to retrofit eligible facilities with energy-efficient commercially available technologies that reduce energy use.

The proposed Project must meet the objectives outlined below:

- Systems installed shall use commercially available technologies that create sustainable and cost-effective energy savings through a program that establishes energy-efficient retrofit results.
- Create and implement a mechanism for identifying energy savings opportunities, implementing retrofits and monitoring/verifying energy savings. This mechanism should be created in a way that is sustainable beyond the duration of funding from this contract. Retrofit activity must be monitored to ensure that quality work is performed.
- Provide education and outreach to property tenants that addresses behavioral, maintenance or other actions they can take to reduce energy consumption.

Funding can be used to support equipment purchases, contracting and installation. A preference will be given to Projects that can be completed expeditiously and within one year of the Award. All Projects must be completed prior to December 30, 2011. Prior to commencing work, projects must have local approvals, permits and requirements complete, as appropriate. Installation also must be in accordance with local plumbing, electrical, mechanical and contractor requirements

If funding for more than one project is requested, an Applicant must prioritize the projects so that, if all projects cannot be funded, we can fund those with the highest stated priority. For a project to receive final approval design documents shall be made available for inspection, as appropriate and non-binding estimates shall be submitted with the response. Participants will be limited to a maximum of \$500,000 (five hundred thousand) total for all projects.

Also note that solar water heating systems must be either SRCC rated (OG -100) or meet Florida Solar Energy Center Standard 101-09. Boilers are not eligible for funding under this Funding Opportunity. Electrical components must be UL-listed.

Application Requirements

The response to this Funding Opportunity must consist of an Application that includes an Application Information Form, a **completed and signed** Grant Agreement Form, a Proposal and other required forms. The Application Information Form and Grant Agreement Form, as well as other required forms, are located in Appendix A – Required Forms.

The Proposal must include the following sections with each section titled as follows:

Project Overview
Project Summary
Project Description
Monitoring and Verification
Firm or Organization Background and Experience
Budget
Leveraged Funds
Required Forms

Applications containing more than one Project must contain the sections listed above for each Project.

All documents submitted to the SEO, including all Application materials, are public records governed by Chapter 132 of the General Statutes and applicable provisions of the General Statutes protecting confidential information. When specific information in an Application is regarded by the Applicant and by law as confidential and not subject to disclosure under the North Carolina Public Records Act (e.g., trade secrets and/or privileged and confidential information), the Applicant should specifically and clearly designate it as such in writing on that portion of the Application in which the information appears with the following notice:

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, the SEO and DOE shall have the right to use or disclose the data here to the extent provided in the Award. This restriction does not limit the government's right to use or disclose data obtained without restriction from any source, including the Applicant.

An Applicant should provide an explanation for why particular information is regarded as confidential. Indiscriminate designations of information as “confidential,” such as form language automatically inserted into e-mails or into the margins of documents, will not be regarded as sufficient designations.

Project Overview

The Project Overview is a one-page narrative summary of the proposed Project that contains a brief description of the Project, including how the Project meets the funding

objectives of this Funding Opportunity, the amount of funding requested and a brief overview of the Applicant's background and qualifications.

Project Summary

The Project Summary is a one-paragraph summary of the proposed Project that contains a brief description of the Project and key results. This paragraph will be used for public announcement in the event that the Project is funded.

Project Description

This section must include, in narrative, outline and/or graph form, the Applicant's approach to accomplishing the tasks outlined in the Funding Objectives section of this Funding Opportunity. The Applicant must identify and describe the major tasks necessary to complete the Project prior to December 31, 2011. A description of each task and the schedule for accomplishing each must be included. Submit examples of similar projects successfully completed.

Using up to ten standard pages for the narrative, and additional pages for charts and diagrams, describe each task in sufficient detail to explain how the proposed project will be successfully completed:

1. Provide a description of existing equipment that will be replaced, including specification, models, age in years and efficiency ratings.
2. Provide a description of proposed new equipment, including specifications and efficiency ratings.
3. Provide a projected ANNUAL amount of energy saved in BTUs or kWh and the energy dollars saved. Calculations must be shown.

Applicants must clearly describe how they will meet the objectives and how they will use the available resources to do so. Applicants should consider the Funding Objectives above and address their ability to perform the proposed tasks.

Monitoring and Verification

Applicants must develop and include in the Proposal a Monitoring and Verification (M&V) plan to assess the energy savings that resulted from the implementation of the Project. Note that prior to the implementation of the Project, A Grantee is required to measure the *actual* energy consumption of the equipment, vehicle, and/or facilities to be addressed by the Project. The M&V plan shall include the methodology, including documentation that will be provided to the SEO, used to measure the energy savings both before and after Project implementation. Project results at the building meter may be tracked using a sample of circuits and extrapolate the results to the entire project.

Note that all Project must have a maintenance or recovery mechanism in place in the event of a power outage or system failure.

All projects are subject to monitoring site visits by the SEO during the life of the Project and through the end of the monitoring period to verify progress and system operation.

Firm or Organization Background and Experience

This section must include the proposed staffing and deployment and organization of personnel to be assigned to the Project. The Applicant must provide information as to the qualifications and experience of all key personnel to be assigned to this Project, including brief resumes citing experience with similar projects and the responsibilities to be assigned to each person.

Applicants must disclose all the names and organizations (including contractors) of those who provided substantive information in preparing this Application.

Budget

The Applicant must include a budget summary, budget narrative and budget justification for the proposed Project. The budget summary is a one-line statement of each Project-related expense in the following format:

Line Item	Line Item Summary	Cost per Item	Number of Items	Total
Direct Costs				
Administrative Costs				
Leveraged Funds				

In the text of the Proposal, the Applicant also must provide a budget narrative which describes each expense item in sufficient detail to provide a complete picture of how funds will be allocated. The budget justification is a brief explanation of each line item and indicates how each item relates to the proposed Project.

Administrative Costs:

Examples include personnel management and fiscal and legal support, *up to a maximum of 10 percent* of the amount of the requested Award amount. If the actual Award is less than the requested amount, then administrative costs are limited to 10 percent of the actual Award amount.

Ineligible Costs:

Any cost that is listed as an ineligible cost under 10 CFR 420.18 (“Expenditure prohibitions and limitations” at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=91b9e912ec80f9804e44a2ccee896678&rqn=div5&view=text&node=10:>

[3.0.1.4.15&idno=10](#)) will not be funded and not be eligible for use as leveraged funds. Please review the list of SEP-prohibited costs carefully before writing your proposal.

Leveraged Funds

There are no requirements for leveraged funds. However, Applicants that do leverage funds will receive points in the evaluation. Please refer to the Evaluation Criteria section for details. Please note that any funds that the Applicant includes as leverage are subject to all of the requirements of Awards under this Funding Opportunity.

Required Forms

Applicants are required to submit with the Application the following completed forms:

1. Application Information Form.
2. Completed and signed Grant Agreement Form.
3. National Environmental Policy Act Form (ES-1). A Project funded under this Funding Opportunity is subject to the National Environmental Policy Act (NEPA), which requires the consideration of the environmental impacts of proposed Projects and of reasonable alternatives to activities that may have an environmental impact. **However, funding under this Funding Opportunity is available only to Projects that will be categorically excluded from NEPA**, which includes but is not limited to, the following categories of projects:
 - Energy efficient retrofits, including the installation of energy efficient lighting in existing buildings, HVAC upgrades, weather sealing, replace of windows and doors, etc.
 - Installation of devices and systems in existing buildings to promote “Smart” energy consumption patterns.
 - Solar Electricity/Photovoltaic – appropriately sized system or unit on existing rooftops and parking shade structures; or a 60 kW system or smaller unit installed on the ground within the boundaries of an existing facility.
 - Wind turbine – 20 kW or smaller.
 - Solar thermal – system must be 20 kW or smaller.
 - Ground source heat pump – 5.5 tons of capacity or smaller, horizontal/vertical, ground, closed-loop system.

Please see State Energy Program Notice (10-0001) dated December 17, 2009, located at http://www.energync.net/wdocs/arraWebinar/NEPA_program_guidance_notice_10-003.pdf for assistance designing projects that are likely to be categorically excluded.

In order to evaluate the potential adverse environmental effects of a Project, the Applicant must complete and submit an ES-1 form located in Appendix A – Required Forms.

4. Debarment and suspension. The SEO is restricted from making Awards to parties who are debarred, suspended or otherwise excluded from or ineligible for participation in federal or State financial assistance activities. For this reason, the Applicant must complete and submit the certification regarding debarment and suspension located in Appendix A – Required Forms. Grantees are further prohibited from utilizing contractors or subcontractors who are debarred or suspended from federal or State financial assistance activities or contracting.
5. Lobbying. Applicant must certify that it has not and will not use federally appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any agency, member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract or grant. For this reason, the Applicant must complete and submit the certification regarding lobbying located in Appendix A – Required Forms.
6. Historically Underutilized Businesses (HUB). The SEO is required to report to the OERI regarding the use of historically underutilized businesses in the performance of contracts for goods, services and construction that are procured with funds from an Award. For this reason, the Applicant must fill out the HUB form located at Appendix A – Required Forms.
7. State Grant Certification – No Overdue Tax Debts. Pursuant to N.C.G.S. 143C-6-23(c), a Grantee who is a non-State entity except that non-State entities subject to the audit and other reporting requirements of the Local Government Commission are excluded from this requirement; see NCGS § 143C-6.23 and 143C-1.1(d)(18)) is required to certify that the Grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State or local level. For this reason, Applicants who are non-State entities must complete and submit the form located in Appendix A – Required Forms.
8. Conflicts of Interest. Non-State Grantees except that non-State entities subject to the audit and other reporting requirements of the Local Government Commission are excluded from these requirements; see NCGS § 143C-6.23 and 143C-1.1(d)(18)) are required to file with the SEO a copy of the Grantee's policy addressing conflicts of interest that may arise involving the Grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Grantee's employees or members of its board or other governing body, from the Grantee's disbursing of State funds, and shall include actions to be taken by the Grantee, the individual or both to avoid conflicts of interest and the appearance of impropriety. For a sample policy addressing conflicts of interest, see Appendix A – Required Forms.

Application Format Specifications

1. All paper copies should be printed double-sided and on recycled paper with a minimum post-consumer content of 30 percent.
2. All pages/sections must be numbered for easy reference.
3. All paper copies should minimize or eliminate the use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
4. Materials should be submitted in a format which allows for easy removal and recycling of paper materials.
5. All page margins must be 1.0 inch (2.5 cm).
6. Proposals may be single spaced (1.0).
7. No type size smaller than 10 point is to be used for text or tables, except as legends on reduced drawings.
8. Proposals should be focused, concise and organized in accordance with the Funding Opportunity requirements.
9. Samples, videotapes, slides, DVDs or other ancillary items will NOT be accepted.
10. Electronic copies of Proposals must be generated in PDF format from a text-based file (such as a Microsoft Word or Word Perfect document) so that Proposals are searchable. The Proposal file **MUST BE SUBMITTED AS A SINGLE PDF file**. Other file formats will NOT be accepted, unless a waiver is granted pursuant to an electronic filing waiver request. Please see the Submission Process section for information on making an electronic filing waiver request.
11. Applicants are encouraged, but not required, for reasons of space conservation and simplicity, to embed graphics within Proposals. For graphics submitted as separate files, the acceptable file formats (and the respective extensions) are Graphics Interchange Format (.gif), JPEG (.jpg), and Tagged-Image Format (.tif). Note: Each graphic submitted as a separate file will count as one page in the Proposal page count, regardless of size.
12. No files larger than 10 MB in size will be accepted.

Virus Check

The Applicant is responsible for performing a virus check on the electronic copy of the Proposal prior to submission. As a standard part of entering the Proposal into its processing system, the SEO will scan each electronic Proposal for viruses. A Proposal may be rejected if a virus is detected.

Evaluation Criteria

Below are the evaluation criteria and the points for each criterion that will be used to score and rank proposals. Proposals shall address every criterion. Proposals shall be specific to the Project site and offer supporting calculations and/or descriptions when

necessary. More points in a criterion will be awarded for Project-specific calculations and documentation.

Energy Saved: BTUs or kWh saved: (up to 30 pts)

Two points for each 1,000,000 BTUs above 5,000,000 BTUs (or fraction thereof) per \$1,000 of grant funds for a maximum of 30 points. Use BTUs generated on an annual basis. (For example, 6,000,000 BTUs/\$1,000 grant funds = 2 points; 7,000,000 BTUs/\$1,000 grant funds = 4 points, etc.)

Funds Leveraged: (up to 15 pts)

Leveraged funds can be in-kind costs, State or local funds. Points will not be given if ARRA funds are leveraged. One point will be awarded for every five (5) percent of requested funds that are leveraged, as shown in Equation 1, up to a maximum of 15 points.

$$\text{Points} = \frac{\text{Leveraged Funds}}{\text{Requested Funds} \times 0.05} \quad \text{Equation 1}$$

Jobs Created or Retained: (up to 15 pts)

Use full-time-equivalent (FTE) jobs created or maintained as a **direct result of this Project** and include an estimate of different positions in your project and number of hours per position. Divide the total number of hours by 2,080 to arrive at FTEs. Please separately list the total number of created positions and the total number of retained positions, total cumulative number of hours for all positions in each category and the FTE number. **{0-4160 hrs = 5 points, hours in excess of 4,161 = 10 points} All calculations must be shown.**

Project Timeline Completion: (up to 10 pts)

Note significant milestones and major steps in completing the Project, including start and completion dates (up to 10 points). Projects that can be installed and operational within one year of contract award will receive five points.

Project Management Capability: (up to 15 pts)

Note Project team experience and qualifications to implement the proposed Project, including any contractors and subcontractors who will be assigned to the proposed Project. The SEO reserves the right to approve any subcontractor.

Project Location: (up to 15 pts)

Tier 1 locations will receive 10 points; Tier 2 locations will receive five points. Five additional points will be given to locations with a county unemployment rate greater than the State average on the date of RFP issuance. A current map of economically distressed counties can be found at:

<http://www.nccommerce.com/en/BusinessServices/SupportYourBusiness/Incentives/CountyTierDesignations2010.htm>.

Project and Technology Description: (up to 15 pts)

Description of proposed new equipment/commercially available technologies that will be used to reduce energy use, possible energy generation and emissions reductions as applicable. All Projects must demonstrate how they will transition to a sustainable business model that will persist after ARRA funds are expended and contribute to the growth of the clean energy sector in North Carolina.

POINT SUMMARY

Energy Savings	30 points maximum
Funds Leveraged	15 points maximum
Jobs Created or Retained	15 points maximum
Project Timeline	10 points maximum
Project Management Capability	15 points maximum
Project Technology & Description	15 points maximum
Project Location	15 points maximum

Total Points Possible: 115

Responses shall have at least 80 points and have at a minimum of ten points in Energy Saved and five points in Jobs Created or Retained categories to be considered for an award.

Submission Process

The Application, including the Application Information Form, Grant Agreement Form, Proposal and Required Forms **must be received electronically** no later than **2:00 p.m., Eastern Standard Time, on the Closing Date at lharris@nccommerce.com**. The subject line of the electronic mailing must include the Applicant's name and the title of this Funding Opportunity. **In addition, one original** containing the original (not electronic) signatures of the Applicant on the Grant Agreement Form and where required on all Required Forms **and one paper copy** of the Application, must be received by the Closing Date and must be submitted to the SEO at the following address: Lauren Harris, State Energy Office, 1830-A Tillery Place, Raleigh, N.C. 27604. Applications will NOT be accepted after the Closing Date unless the SEO has requested that additional supplemental materials be delivered at a later time.

Submission Checklist

Please submit Application documents in the following order:

- Application Information Form
- Grant Agreement Form
- Proposal
 - Project Overview
 - Project Summary
 - Project Description
 - Timeline with Milestones
 - Monitoring and Verification
 - Firm or Organization Background Experience
 - Budget
- National Environmental Policy Act Form (ES-1)
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
- Certification Regarding Lobbying
- HUB Statement
- State Grant Certification – No Overdue Tax Debts applies to only non-State entities except that non-State entities subject to the audit and other reporting requirements of the Local Government Commission are excluded from these requirements; see NCGS § 143C-6.23 and 143C-1.1(d)(18))
- Conflict of Interest Policy (non-State Applicants only) (applies to only non-State entities except that non-State entities subject to the audit and other reporting requirements of the Local Government Commission are excluded from these requirements; see NCGS § 143C-6.23 and 143C-1.1(d)(18))

Please make sure you have the following important items:

- DUNS number
- CCR Registration
- IPS Registration (Interactive Purchasing System) (<https://www.ips.state.nc.us/>)

Electronic Filing Waiver

The Application, including the Application Information Form, the Grant Agreement Form, the Proposal and Required Forms, MUST be submitted electronically to lharris@nccommerce.com. However, Applicants not able to obtain Internet access or for whom the electronic filing requirement causes an undue hardship may request a waiver from the electronic filing requirement by writing to:

State Energy Office
N.C. Department of Commerce
ATTN: Electronic Submission Waiver Request
1830-A Tillery Place
1340 Mail Service Center
Raleigh, N.C. 27699-1340

In the waiver request, the Applicant must clearly indicate why the electronic filing requirement causes undue hardship and provide a list of all factors that make

compliance difficult, expensive or cumbersome. All waiver requests will be handled on a case-by-case basis.

Review Process

The review process will begin immediately following the Closing Date and will take place in four stages.

Stage 1: Eligibility

In the first stage of review, the SEO will review all Applications to ensure that all relevant and required documentation is complete and that the proposed Project is eligible for funding under the Funding Opportunity and addresses the funding objectives of the Program.

Stage 2: Recommendations by Committee

A review committee will complete the second stage of the review. Review committee members will consist of SEO staff and non-SEO experts (from the private sector, academia and other government agencies) qualified to determine and/or verify the merits of a Proposal. The review committee will score the Applications. The review committee may: 1) recommend a Proposal, 2) recommend that a Proposal be partially funded or 3) not recommend a Proposal.

Stage 3: SEO/OERI/DOE Review

The third stage of the review will be conducted by the program manager for the SEP Commercial, Industrial, Non-Profit program at the SEO, who will determine which Applications will be selected by the SEO for an Award based on the recommendations of the review committee. Award selections by the SEO are also subject to the review and approval of the OERI and the DOE.

Stage 4: NEPA and NHPA Compliance

Once a Project is selected for possible Award by the SEO, the Project must be reviewed for compliance with NEPA and the National Historic Preservation Act (NHPA). The SEO will make an Award to a Project only after the Project is determined to be categorically excluded from the NEPA requirement to perform a wholesale Environmental Assessment or Environmental Impact Statement. Additionally, the SEO will make an Award to a Project only after the Project is determined to be excluded from a NHPA Section 106 review pursuant to the Memorandum of Agreement between the Department of Commerce, DOE and the North Carolina Department of Cultural Resources dated May 18, 2010, or after a Section 106 review is completed.

Selection of Review Committee Members

In selecting reviewers, the SEO will take into consideration the avoidance of organizational or personal conflicts of interest and competitive relationships between the Applicant and the prospective outside evaluator. All reviewers will be under agreement with the SEO that any and all information and data contained in the Proposal will be used only for evaluation purposes and will not be further disclosed. (Note, however, that

most, if not all, of the Application will become a public record upon announcement of the Awards unless a request for confidentiality is made by the Applicant and the information requested meets the criteria for confidentiality pursuant to applicable law.) Applicants should not assume that evaluators are acquainted with their firm, key individuals or with any other information.

Award Structure

1. Project costs up to 95 percent of the Project amount will be reimbursed on a monthly basis during the life of the Project provided that the Grantee submits by the fifth of each month paid invoices, documentation that the Project has met the milestones for the Project and required reports as discussed in Reporting Requirements section. The remaining 5 percent will be paid when all Project requirements are met. The paid invoices must be submitted with a monthly payment request and monthly narrative containing all information required to be in compliance with ARRA reporting requirements.
2. No Award shall exceed \$500,000. No Application will be considered for Applications containing Projects with an aggregate value of less than \$100,000. If an Applicant submits a Proposal for \$100,000 or more and upon review of the Proposal, the SEO determines to fund the Proposal, but at a lesser amount than requested, only the amount approved for funding by the SEO will be awarded.
3. Grantees must have a current, valid DUNS number and must register with the Central Contract Registry (CCR), at the CCR Web site: <http://www.ccr.gov/>. No Award will be made until the DUNS number is confirmed.
4. The right to program income, as defined by 10 CFR 600.101, that is generated by the Project shall vest in the SEO. Grantees who wish to expand the scope of the Project shall consult the SEO and seek a modification to the Award through a modification of the Grant Agreement. Otherwise, program income generated by the Project shall be deducted from the total Amount of the Grantee's Award.

Grantees who are State agencies and who use recovery funds for the purposes of soliciting bids, proposals or construction projects, including design services exceeding \$5,000, must advertise the opportunity on the IPS Web site, <https://www.ips.state.nc.us/>, and also in the local newsprint outlets, including minority and women owned outlets. The State Energy Office maintains a list of minority and women owned newsprint outlets.

Reporting Requirements

Reports noting energy savings, jobs created and other information documented below shall be completed on or before the fifth day of each month from the date of the Award through one year after the Project is completed. The Award under this Funding Opportunity is subject to the reporting requirements of the DOE Award DE-EE0000157, including the following:

- Baseline energy and fuel consumption prior to project implementation (where applicable).
- Job creation and retained (number, type, duration)
- Energy savings, renewable energy capacity generation, petroleum displacement and emissions reductions.

Projects that contain activities that are subject to the Davis-Bacon Act and Contract Work Hours and Safety Standards Act (construction, alteration and repair work, including painting) also are subject to weekly reporting requirements, including the submission of certified weekly payrolls. Please see Appendix C – DOE Award Agreement DE-EE0000157 for further information regarding Davis-Bacon Act reporting.

Any Grantee who is a non-State entity (except for non-State entities subject to the audit and other reporting requirements of the Local Government Commission; see NCGS § 143C-6.23 and 143C-1.1(d)(18)) is also subject to the reporting requirements described in Appendix F – State Grant Compliance Reporting Requirements. All Grantees also are required to report their utilization of North Carolina registered historically underutilized businesses (HUB).

All costs related to the reporting requirements applicable to an Award under this Funding Opportunity must be included in the various budget items in the Proposal. No additional or direct payment may be included for providing these reports.

Appendix A – Required Forms



Application Information Form

Energy Efficiency Projects for Commercial, Industrial and Large Nonprofit Sectors

Name of Organization _____

Contact Person _____ Title _____

Physical Address _____

City/County/Zip _____

Phone _____ Fax _____ E-mail _____

DUNS number: _____ E-Procurement Registration? Yes ___ No ___

Federal Employer Identification Number or alternative identification: _____

Project Location (street address, city, county, zip code) _____

Jobs - total # of people _____ Total # of hours _____

Energy saved or product displaced in BTUs or therms _____ (1 therm = 100,000 BTUs)

Project start date _____ End date _____

Funds Requested for Solicitation No. **2010SEPComIndNonprofit1**
: \$ _____

Leveraged Funds: \$ _____ Total Project Cost: \$ _____

Grant Agreement Form

The Grant Agreement between the Department of Commerce, Energy Division (the "Agency") and the Grantee named below consists of all rights and obligations contained in the following:

- a. Funding Opportunity and Invitation to Submit Applications for the SEP Energy Efficiency Projects for Commercial, Industrial and Large Nonprofit Sectors (**2010SEPComIndNonprofit1**), including all Appendices and amendments thereto;
- b. Grantee's Application/Proposal as approved by the SEO;
- c. DOE Award Agreement DE-EE0000157, as the same may be amended from time to time;
- d. Applicable Directives of the OERI at <http://qa.ncrecoverycms.nc.gov/Compliance/OERIDirectives.aspx#>;
- e. SEP regulations, 10 CFR Part 420 at <http://ecfr.gpoaccess.gov>; and
- f. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>.

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Grant Agreement. In witness whereof, the Grantee and the Agency have executed this Grant Agreement which shall become effective on the date executed by the Agency.

ORGANIZATION: _____

CONTACT PERSON: _____

CONTACT INFORMATION: _____
Phone Fax E-mail

BY: _____ TITLE: _____ DATE: _____
(Signature)

(Printed name)

<i>(Dept. of Commerce use only)</i>		
BY: _____	TITLE: _____	DATE: _____
(Signature)		

(Printed name)		
Grant Code (non-State Entities): _____		

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR APPLICATION.

U.S. DEPARTMENT OF ENERGY
NATIONAL ENERGY TECHNOLOGY LABORATORY

Environmental Questionnaire for Making Individual NEPA Determinations For Activities Funded From State Energy Program Grants

I. BACKGROUND

The Department of Energy's (DOE's) procedures for implementing the National Environmental Policy Act (NEPA) codified at 10 CFR Part 1021 require careful consideration of the potential environmental consequences of all proposed actions early in their planning. DOE must determine at the earliest possible time whether such actions require preparation of an Environmental Assessment, an Environmental Impact Statement, or are categorically excluded from further NEPA review. You must complete this Environmental Questionnaire regarding your proposed action to provide DOE with the information it needs to determine the appropriate level of NEPA review.

II. INSTRUCTIONS

In completing this questionnaire, you must provide specific information regarding the nature of your proposed action, including information on its size, operations, and the types and quantities of air emissions, wastewater discharges, solid wastes, land disturbance, etc. You should identify the location(s) of the proposed action and specifically describe the activities that would occur at that location. In addition, you should submit a copy of your statement of work (SOW) or other description of the proposed activity as it appears in your proposal or application. You should provide all of the information about a single project (including any "connected actions" as that term is defined under NEPA) in one questionnaire. If you are proposing two or more unrelated and distinct actions (e.g., a state or tribe applying for financial assistance for a number of separate energy conservation projects), you should complete a separate questionnaire for each project.

III. QUESTIONNAIRE

A. SUMMARY OF PROPOSED ACTION (Original grant recipient should fill out items 1-4 if it is providing this form to others who are seeking loans or grants from the original recipient – for example, the original recipient is using SEP funds for a revolving loan or grant program.)

1. Original Funding Source: State Energy Program Grant
2. Original Recipient (Name of State, Tribe, Territory, or Other Entity): State Energy Office, NC
3. Grant Number: DE-EE0000157
4. Name of Market Title in the Original Recipient's Grant that Would Fund this Proposal:

5. Proposed Action: _____
6. Proposer (if not the Original Recipient): _____

7. Description (Provide a detailed summary of the nature and extent of the proposed action. The electronic form will insert additional space as needed, or use an attachment if more space is needed.): _____
8. Summarize the activities necessary to implement the proposed action and list all locations where each activity will occur.

9. Does the proposed action involve disturbance of undeveloped land (e.g., forest lands, agriculture fields, grasslands, arid lands, wetlands, coastal areas, etc.)?
 Yes No If yes, describe nature, extent, and duration of disturbance.

10. Describe the nature, size, and operation of any structure that will be constructed or installed as part of the proposed action.

11. Identify major materials and products (if any) that would be produced by the proposed action.

Materials Used (Input)	(Estimate Quantity)	Materials Produced (Output)	(Estimate Quantity)
<input type="checkbox"/> Coal	()	<input type="checkbox"/> Wastewater	()
<input type="checkbox"/> Natural Gas	()	<input type="checkbox"/> Air Emissions	()
<input type="checkbox"/> Oil	()	<input type="checkbox"/> Solid Waste	()
<input type="checkbox"/> Electricity	()	<input type="checkbox"/> Hazardous Waste	()
<input type="checkbox"/> Water	()	<input type="checkbox"/> Electricity	()
<input type="checkbox"/> Hazardous Materials	()	<input type="checkbox"/> Other Products – List	
<input type="checkbox"/> Others – List	()	_____	

D. ENVIRONMENTAL IMPACTS

This section asks for information needed to assess the environmental impacts of the proposed action. NEPA requires evaluations of the proposed action’s potential impacts on the environment (including land use; energy use; natural, historic, and cultural resources; and pollutants).

1. Land Use

- a. Characterize present land use where the proposed action would be located.
 Urban Industrial Commercial Agricultural
 Suburban Rural Residential Research Facilities
 Forest University Campus Other
- b. Describe construction, development, and operation of the proposed action. _____
 No construction would be anticipated for this project.
- c. Would the proposed action be located in or near a park, monument, wilderness area, or any other area of natural, historical, or cultural significance?
 No Yes (describe) _____
- d. Would the proposed project(s) affect any existing body of water?
 No Yes (describe) _____
- e. Would the proposed project(s) be located within or impact a floodplain or wetland?
 No Yes (describe) _____

2. Vegetation and Wildlife Resources

- a. Identify any state- or federal-listed endangered or threatened plant or animal species or habitat affected by the proposed action. _____
 None
- b. Would any threatened or endangered species habitat be affected by the proposed action?
 No Yes (describe) _____
- c. Describe any impacts that construction activities would have on any other types of sensitive or unique habitats.
 No planned construction No habitats None Impact (describe)

3. Socioeconomic and Infrastructure Conditions

- a. Would the proposed action generate increased traffic use of roads through local neighborhoods, urban, or rural areas.
 No Yes (describe) _____
- b. Would the proposed action require new transportation access (roads, rail, etc.)? Describe location, impacts, costs.
 No Yes (describe) _____
- c. Would any new transmission lines, pipelines or power line or other right-of-ways be required?
 No Yes (Describe location, voltage, and length of right-of-way)

4. Historical/Cultural Resources

- a. Describe any historical, archeological, or cultural places in the vicinity of the proposed action; note any sites included on the National Register of Historic Places.
 None (describe) _____
- b. Would construction or operational activities of the proposed action disturb any historical, archaeological, or cultural buildings, structures, or sites?
 No planned construction No historic buildings, structures, or sites Yes (describe)

- c. Would the proposed action interfere with visual resources (e.g., eliminate scenic views) or alter the present landscape?
 No Yes (describe) _____

5. Atmospheric Conditions/Air Quality?

- a. Would proposed action require issuance of new or modified air permits to perform project related work and activities?
 No (explain) Yes _____
- b. Would the proposed action emit any pollutants regulated by the National Emissions Standards for Hazardous Air Pollutants (NESHAPS)?
 No (explain) Yes _____

- c. Would the proposed action be classified as either a New Source or a major modification to an existing source under the federal Clean Air Act?
 No Yes (describe) _____
- d. Would the proposed action need to comply with the New Source Performance Standards?
 Not applicable No (explain) Yes

- e. Would the proposed project(s) be subject to Prevention of Significant Deterioration review?
 Not applicable No (explain) Yes (describe)

6. Hydrologic Conditions/Water Quality

- a. What is the closest body of water to the proposed action's location(s) and what is its distance from these locations. Site? _____
- b. What sources would supply potable and process water for the proposed action? _____
- c. Quantify the annual amount of wastewater that would be generated by the proposed action.
 - None
 - Non-contact cooling water (gallons)
 - Process water (gallons)
 - Sanitary and/or grey water (gallons)
 - Other -- describe (gallons)
- d. What would be the major components of each type of wastewater (e.g., coal fines)?
 No wastewater produced

- e. Identify the local treatment facility that would receive wastewater from the proposed action.
 No discharges to local treatment facility

- f. Describe how wastewater would be collected and treated.

- g. Would any run-off or leachates be produced from storage piles or waste disposal sites?
 No Yes (describe sources, nature of flow, and collection techniques)

- h. Would the proposed action require issuance of new or modified water permits for operation or construction?
 No Yes (describe) _____
- i. Where would wastewater effluents from the proposed action be discharged?
 No wastewater produced

- j. Would the proposed action require a permit to discharge effluents into a body of water?
 No Yes (describe water use and effluent impact)

- k. Would a new or modified National Pollutant Discharge Elimination System (NPDES) permit be required?
 No Yes (describe) _____
- l. Would the proposed action adversely affect the quality or movement of groundwater?
 No Yes (describe) _____
- m. Would the proposed action use groundwater? If so, how much?

7. Solid and Hazardous Wastes

- a. Describe and estimate major non-hazardous solid wastes that would be generated by the proposed action. Nonhazardous solid wastes are defined as any solid, liquid, semi-solid, or contained gaseous material that is discarded or has served its intended purpose, or is a manufacturing or mining by-product (40 CFR 260, Appendix I).
- | | |
|--|----------|
| | Quantity |
| <input type="checkbox"/> None | (_____) |
| <input type="checkbox"/> Municipal solid waste, i.e., paper, plastic, etc. | (_____) |
| <input type="checkbox"/> Coal or coal by-products | (_____) |
| <input type="checkbox"/> Other -- identify | (_____) |
- b. Would proposed action require new or modified solid waste and/or hazardous waste related permits to perform project work activities?
 No Yes (explain) _____
- c. How and where would solid waste disposal be accomplished?
 On-site (identify and describe location) Off-site (identify location and describe facility and treatment)

- d. How would wastes for disposal be transported? _____
- e. Describe and estimate the quantity of hazardous wastes (40 CFR 261.3) that would be generated, used, or stored by the proposed action.

- f. How would hazardous or toxic waste be collected and stored? _____
- g. If hazardous wastes would require off-site disposal, have arrangements been made with a certified TSD (Treatment, Storage, and Disposal) facility? Identify the TSD facility.
 Not required Arrangements not yet made Arrangements made with a certified TSD facility
- Name and location of TSD facility: _____

8. Health/Safety Factors

- a. Identify hazardous or toxic substances that would be used in the proposed action.
 Hazardous or toxic substances that would be used (identify): _____
- b. What would be the likely impacts of these substances on human health and the environment?

c. Would there be any potential for workers to be exposed to toxic/hazardous chemicals or wastes?

No Yes (describe) _____

d. Are there any special physical hazards associated with the proposed action?

No Yes (describe) _____

e. Would safety training be necessary for any laboratory, equipment, activities or processes involved with the proposed action?

f. Describe any increases in ambient noise levels from construction and operational activities.

Increase in ambient noise level (describe)? _____

g. Would construction result in the removal of natural barriers that act as noise screens?

No construction planned No Yes (describe) _____

9. Environmental Restoration and/or Waste Management

a. Would the proposed action include CERCLA removals or similar actions under RCRA or other authorities, meeting CERCLA cost/time limits?

No Yes (describe) _____

b. Would the proposed action include siting, construction, and operation of temporary pilot-scale waste collection and treatment facilities or pilot-scale waste stabilization and containment facilities?

No Yes (describe) _____

REGULATORY COMPLIANCE

1. For the following laws, describe any existing permits, new or modified permits, manifests, responsible authorities or agencies, contacts, etc., that would be required for the proposed action:

a. Resource Conservation and Recovery Act (RCRA):

None Required (describe) _____

b. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA):

None Required (describe) _____

c. Toxic Substance Control Act (TSCA):

None Required (describe) _____

d. Water Pollution Control Act (WPCA)/Clean Water Act (CAA)/Underground Injection Control Program (UIC):

None Required (describe) _____

e. Underground Storage Tank Control Act (UST)

None Required (describe) _____

f. Clean Air Act (CAA):

None Required (describe) _____

g. Endangered Species Act (ESA):
 None Required (describe) _____

h. Floodplains and Wetlands Regulations:
 None Required (describe) _____

i. Fish and Wildlife Coordination Act (FWCA):
 None Required (describe) _____

j. National Historic Preservation Act (NHPA):
 None Required (describe) _____

k. Coastal Zone Management Act (CZMA):
 None Required (describe) _____

2. Identify any other environmental laws and regulations (federal, state and local) for which compliance would be necessary for this proposed action, and describe the permits, manifests, and contacts that would be required.

F. DESCRIBE ANY ISSUES THAT WOULD GENERATE PUBLIC CONTROVERSY REGARDING THE PROPOSED ACTION.

Describe: _____
 None

G. WOULD THE PROPOSED ACTION PRODUCE ADDITIONAL DEVELOPMENT, OR ARE OTHER MAJOR DEVELOPMENTS PLANNED OR UNDERWAY, IN THE AREA?

No Yes (describe) _____

H. SUMMARIZE THE SIGNIFICANT IMPACTS THAT WOULD RESULT FROM THE PROPOSED ACTION.

None (provide supporting detail) Significant impacts (describe)

IV. CERTIFICATION BY PROPOSER

I hereby certify that the information provided herein is current, accurate, and complete as of the date shown immediately below.

DATE: _____
(MM/DD/YYYY)

SIGNATURE: _____

TYPED NAME: _____

TITLE: _____

ORGANIZATION: _____

V. REVIEW AND APPROVAL BY DOE

I hereby certify that I have reviewed the information provided in this questionnaire, have determined that all questions have been appropriately answered, and judge the responses to be consistent with the efforts proposed. Based on the information in the questionnaire, I conclude the following (check the appropriate box):

- The proposed action falls under one or more of the categorical exclusions (CXes) listed in Appendix A or B of Subpart D of the DOE NEPA Implementing Procedures and would not (1) violate applicable ES&H requirements, (2) require siting of waste TSD or recovery facilities, (3) disturb hazardous substances (excluding naturally occurring petroleum and natural gas), thus producing uncontrolled or unpermitted releases, and (4) adversely affect environmentally sensitive resources.

Additionally, the proposed action (1) would not present any extraordinary circumstances such that the action might have a significant impact upon the human environment, (2) is not connected to other actions with potentially significant impacts, and (3) is not related to other actions with cumulatively significant impacts.

Based on the Environmental Questionnaire and these conclusions, Categorical Exclusion of the proposed action would be appropriate.

- The proposed action does not qualify as a CX as identified in Subpart D of DOE's NEPA Implementing Procedures; therefore, the proposed action may require further documentation in the form of an Environmental Assessment or Environmental Impact Statement.

DOE NEPA Compliance Officer: _____ Date: _____
MM/DD/YYYY)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

1. By signing and submitting this document, **the prospective lower tier participant** is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the State and/or federal government, the department or agency with which this transaction originates may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 45 CFR Part 76.

4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
5. The prospective lower tier participant further agrees by submitting this document that it shall include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction shall rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency of which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the State and/or federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.

The government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.

(see <http://www.pandc.nc.gov/actions.asp> for the N.C. list and <https://www.epls.gov/> for the federal list)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion –
Lower Tier Covered Transactions - Continued

1. The prospective lower tier participant certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any State and/or federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____ Signature	_____ Title
_____ Agency/Organization	_____ Date

(Certification signature should be same as the Grant Agreement Form signature.)

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, 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 Federally funded contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award document for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) who receive federal funds of \$100,000.00 or more and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction 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 \$10,000.00 and not more than \$100,000.00 for each such failure.

Signature	Title
Agency/Organization	Date

(Certification signature should be same as the Grant Agreement Form signature.)

Office for Historically Underutilized Businesses (HUB)

Please check the following:

- 1) Is your organization registered with HUB office? Yes_____ No_____
- 2) Are your organization minority contractors, small contractors, physically handicapped contractors, women contractors, disabled business enterprises and nonprofit work centers for the blind and severely disabled? Yes_____ No_____

State Grant Certification – No Overdue Tax Debts

Instructions: Non-State Grantees should complete this certification for all State funds received. Entity should enter appropriate data in the yellow highlighted areas. The completed and signed form should be provided to the State agency funding the grant to be attached to the contract for the grant funds. A copy of this form, along with the completed contract, should be kept by the funding agency and available for review by the Office of State Budget and Management. If you have questions, contact: Grants Reporting, Office of State Budget and Management, 919-807-4795.

Entity's Letterhead

[Date of Certification (mmddyyyy)]

To: State Agency Head and Chief Fiscal Officer

Certification:

We certify that the [insert organization's name] does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the federal, State, or local level. We further understand that any person who makes a false statement in violation of N.C.G.S. 143C-6-23(c) is guilty of a criminal offense punishable as provided by N.C.G.S. 143-34(b).

Sworn Statement:

[Name of Board Chair] and [Name of Second Authorizing Official] being duly sworn, say that we are the Board Chair and [Title of the Second Authorizing Official], respectively, of [insert name of organization] of [City] in the State of [Name of State]; and that the foregoing certification is true, accurate and complete to the best of our knowledge and was made and subscribed by us. We also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

Board Chair

[Title of Second Authorizing Official]

Sworn to and subscribed before me on the day of the date of said certification.

(Notary Signature and Seal)

My Commission Expires: _____

If there are any questions, please contact the North Carolina Office of State Budget and Management:

NCGrants@osbm.nc.gov - (919) 807-4795

Sample Policy Addressing Conflicts of Interest

A conflict of interest is defined as an actual or perceived interest by a (Staff member/Board member) in an action that results in, or has the appearance of resulting in, personal, organizational or professional gain. A conflict of interest occurs when an Employee/Board member has a direct or fiduciary interest, which includes:

- Ownership with
- Employment of or by
- Contractual relationship with
- Creditor or debtor to
- Consultative or consumer relationship with:

a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services. The definition of conflict of interest includes any bias or the appearance of bias in a decision-making process that would reflect a dual role played by a member of the organization or group. An example, for instance, might involve a person who is an employee and a Board member, or a person who is an employee and who hires family members as consultants.

It is in the interest of the organization, individual staff and Board members to strengthen trust and confidence in each other, to expedite resolution of problems, to mitigate the effect and to minimize organizational and individual stress that can be caused by a conflict of interest.

Employees are to avoid any conflict of interest, even the appearance of a conflict of interest. This organization serves the community as a whole rather than only serving a special interest group. The appearance of a conflict of interest can cause embarrassment to the organization and jeopardize the credibility of the organization. Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to your supervisor immediately. Employees are to maintain independence and objectivity with clients, the community, and organization. Employees are called to maintain a sense of fairness, civility, ethics and personal integrity even though law, regulation or custom does not require them.

Employees, members of employee's immediate family, and members of the Board are prohibited from accepting gifts, money or gratuities from the following:

- a. Persons receiving benefits or services from the organization;
- b. Any person or organization performing or seeking to perform services under contract with the organization; and
- c. Persons who are otherwise in a position to benefit from the actions of any employee of the organization.

Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave or leave without pay. If the employee is acting in any official capacity, honoraria received by an employee in connection with activities relating to employment with the organization are to be paid to the organization.

Appendix B – General Terms and Conditions

- 1. Source and Availability of Funds.** Funding for the Award is provided through the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Feb. 13, 2009) (“ARRA”) through a grant (CFDA # 81.041) by the United States Department of Energy (“DOE”) to the North Carolina Department of Commerce (“Agency”), State Energy Office (the “SEO). Any and all payment of Award funds or the continuation thereof is contingent upon funds for this purpose being provided solely by ARRA. The Parties agree and understand that the payment of any Award is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Agency.
- 2. Conflicting Provisions.** To the extent that any provision of the Grant Agreement is determined to be in contradiction of, or in conflict with any Federal or State law or regulation, the Federal or State law or regulation, shall control, except that if the conflicting provision is regarding any provision in Appendix C, the Grantee shall consult the DOE. All applicable Federal and State laws and regulations are incorporated herein by reference.
- 3. Duties of the Grantee.** The Grantee shall perform all work described in Grantee’s Proposal, as the same may be amended by mutual written agreement of the Parties, by December 31, 2011. Grantee shall perform all duties of the Grant Agreement, including the reporting and auditing requirements of the Grant Agreement, on the schedule and in the manner provided in the specific provisions of the Grant Agreement.
- 4. Payment Provisions.** No later than the fifth calendar day of each month during the effective period of the Grant Agreement (even if no reimbursement is requested for a given month), the Grantee shall submit to the Agency a reimbursement request in the form and manner prescribed by the Agency for approval by the Agency. The Agency shall pay to the Grantee within 30 days from the receipt of any invoice an amount equal to all costs eligible for payment under this Grant Agreement and applicable laws and regulations. However, the Agency will not make any payment to the Grantee if the Grantee has not fulfilled all reporting obligations owed to the Agency at any time payment to the Grantee is due. If the Grant Agreement is terminated, the Grantee shall complete a final accounting report and return any unearned funds to the Agency within 60 days of the termination date. The Agency shall have no obligation for payments based on expenditure reports submitted later than 60 days after termination or expiration of the Grant Agreement period.
- 5. Reporting Requirements.** Any Grantee who is a non-State entity is subject to the reporting requirements described in Appendix F – State Grant Compliance Reporting Requirements. Additionally, Grantee is subject to federal and additional state reporting requirements related to ARRA, State Energy Program regulations, and OERI directives and must submit a report on the fifth calendar day of each month a report in the form and manner specified by the Agency to satisfy applicable reporting requirements. Grantees shall submit back up materials and supporting documentation requested by the Agency. For all work that is subject to the Davis Bacon Act and Contract Work Hours and Safety Standards Act, Grantee must submit Form WH-347 and original certified payrolls to the Agency no later than the seventh calendar day following each weekly payroll date.
- 6. Termination of Grant Agreement; Survival.** This Grant Agreement shall terminate when all obligations, including reporting obligations, of the Grantee have been fulfilled. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive termination unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation. If, through any cause, the Grantee fails to fulfill its obligations under the Grant Agreement in a timely and proper manner, or any representation or warranty made by the Grantee is shown to be false or misleading, then the Agency shall have the right to terminate the Grant Agreement by giving written notice to the Grantee and specifying the effective date thereof. The filing of a petition for bankruptcy by the Grantee shall be an act of default under the Grant Agreement. Upon termination, the Agency’s obligation to disburse any Grant funds shall cease. In addition, the Parties may terminate the Grant Agreement by mutual consent with 60 days notice to the

other Party, or as otherwise provided by law, subject to the second sentence of this paragraph 6.

7. **Recovery of Grant Funds.** The Grantee acknowledges and accepts the State's absolute right in its sole discretion to withhold, discontinue, or recover in part or in full any monies awarded and/or distributed pursuant to the Grant Agreement if it is determined that the Grantee has engaged in unlawful conduct or conduct which violates the spirit and intent of the Program, or if the Grantee fails to comply with the terms of the Grant Agreement. If an audit determines that the Grantee expended the Award improperly or that the Grantee has failed to comply with certifications, representations, warranties and covenants made for the Award, or that the Grantee has failed to keep records and provide access to such records as required by the Grant Agreement, the Grantee shall, at a minimum, be required to reimburse the Agency, and the State may pursue such other action as it deems appropriate. The federal government may also recover Award funds disbursed hereunder for failure to comply with applicable laws, regulations, the DOE Award Agreement, or directives of the Office of Economic Recovery and Investment ("OERI"), and may pursue such other action as it deems appropriate.
8. **Procurement.** Grantee acknowledges and agrees that the ARRA requires the use of competition in the implementation of procurement practices to the maximum extent possible. Grantees who are institutions of higher education, hospitals, and non-profit organizations, as those terms are defined in 10 CFR Part 600, must comply with the procurement regulations in 10 CFR 600.140 through 600.149. Grantees who are units of state or local government as those terms are defined in 10 CFR Part 600, must comply with the procurement regulations in 10 CFR 600.236. Grantees who are for-profit organizations, as those terms are defined in 10 CFR 600, must comply with the procurement regulations in 10 CFR 600.330 and 600.331. Grantees who are public agencies shall comply with all applicable North Carolina law governing the procurement of goods and services and shall further comply with additional OERI requirements regarding procurement as provided in OERI directives 3, 3a, and 3b located <http://www.ncrecovery.gov/Compliance/OERIDirectives.aspx>. All Grantees should see also the OERI terms and conditions in Appendix D – North Carolina Office of Economic Recovery and Investment Directives Regarding the American Recovery and Reinvestment Act of 2009 for additional procurement requirements. Grantee further acknowledges and agrees that any property purchased with funds from the Award are governed by 10 CFR 600.130 through 600.600.137 (institutions of higher education, hospitals, and non-profit organizations), 10 CFR 600.231 through 600.233 (state or local government), and 10 CFR 10 CFR 600.320 through 600.325 (for-profit organizations).
9. **Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C 874).** Grantee and its contractors and subcontractors shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in the Grant Agreement.
10. **Compliance with Clean Water Act, Clean Air Act, Executive Order (E.O.) 11738 and EPA Regulations.** To the extent that any activity performed by the Grantee using funds awarded under this Grant Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time, the Grantee and any of its contractors and subcontractors for work funded under the Grant Agreement which is in excess of \$100,000, agree to the following requirements:
 - a. A stipulation by the Grantee, its contractors or subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20;
 - b. Agreement by the Grantee, its contractors or subcontractors to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports, and

information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;

- c. A stipulation that as a condition for the Award that prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Grant Agreement is under consideration to be listed on the EPA list of Violating Facilities; and
- d. Agreement by the Grantee to include or cause to be included the criteria and requirements in paragraph (a) through (d) of this section in every nonexempt sub-contract and requiring that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under the Grant Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c) (1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

- 11. No Overdue Tax Debts.** No Award will be disbursed if the Grantee has an overdue tax debt owing to the State, until the debt has been satisfied, or if any Federal, State, or local obligation has not been satisfied by the Grantee. If an overdue tax debt goes unsatisfied by the Grantee for more than six (6) months, the Grant Agreement may be declared in default and terminated at the direction of the Agency.
- 12. Record Retention.** The Grantee shall maintain records and accounts that properly document and account for the application of the Award and fulfillment of the Grant Agreement for a minimum of five (5) years after the date of the award, or until all audit exceptions have been resolved, or until resolution of any litigation, claim, negotiation, audit, disallowance action or other action involving the Grant Agreement that has been started before expiration of the five-year period, whichever is longer. Federal policy and applicable regulations regarding record retention in 10 CFR Part 600 may require that records be retained for longer than five (5) years. The Grantee shall comply with the audit policies of the State and Federal government with respect to disposition of the Award and shall comply with the certifications made as a condition of the Award. The Grantee shall provide the Agency with timely copies of reports on any audits that review the use of the Award funds.
- 13. Access to Persons and Records.** The Office of State Budget and Management, the State Auditor, and other State auditors, the Agency shall have access to persons and records of the Grantee, and the right to inspect, copy, audit, and examine all of the relevant books, records, and other documents relating to the Grant and fulfillment of the Grant Agreement for the time period specified for retention in paragraph 12 above. The Grantee shall make such records available upon demand of a duly authorized representative of the State Auditor, or the Agency. In addition, any representative of the United States Inspector General or of the Comptroller General may examine any of the Grantee's or sub-grantees or contractor's records or records of other firms working on the project for which the Award was made. The foregoing may also interview any of the Grantee's (and sub-grantee's and contractor's or other firm's) employee or officers working on the project for which this Award was made. Under the ARRA, the United States Inspector General and the Comptroller General have broad authority to examine records and interview employees, in order to assure that the requirements of the ARRA are met. Nothing in this section or ARRA shall be interpreted to limit or restrict in any way any existing authority of an Inspector General or the Comptroller General.
- 14. Grantee's Representations, Warranties, and Covenants.** The Grantee makes the following representations, warranties, and covenants, and acknowledges and agrees that such representations, warranties and covenants have been material to the Agency's determination that the Grantee is eligible for an Award. The Grantee further agrees that each representation and warranty shall be true, accurate and complete as of the date of the Grantee's execution and delivery to the Agency of the Grant Agreement, as of the date of submission of a request for Award disbursement, and as of the date of any disbursement of any Grant funds.

- a. The Grantee has reviewed and understands the Grant Agreement, the Funding Opportunity and Guidelines, and all related Program documents, and meets all of the applicable eligibility requirements for receipt of the Award.
- b. The Grantee is as described in its Application, duly organized, validly existing and in good standing under the laws of the state of its registration, with power adequate for performing the activity for which the Award was made, and it is duly authorized to transact business in North Carolina.
- c. The execution, delivery, and performance of the Grant Agreement are within the Grantee's power and authority, and the Grantee has duly authorized, executed and delivered the Grant Agreement, and has taken or will take, within the time frames established by the Grant Agreement, all actions reasonably necessary to carry out and give effect to the transactions contemplated by the Grant Agreement.
- d. This Grant Agreement is a legally valid and binding obligation of the Grantee, enforceable against the Grantee in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights.
- e. All statements, representations, and warranties made by or on behalf of the Grantee, and any materials furnished by or on behalf of the Grantee, the Agency or any State actor, are true, accurate and complete in all material respects, and do not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained herein or therein not materially misleading, to the best knowledge and belief of the Grantee. No change has occurred in the Grantee's condition or prospects, financial or otherwise, and no legal action is pending or, to the best of the Grantee's knowledge, threatened, that relates to the activity contemplated by the Grant Agreement or that could materially affect the Grantee's performance under the Grant Agreement.
- f. The Grantee has not received any other grant under the Program during the period covered by the Funding Opportunity.
- g. The Grantee understands that provision of the Award does not override or excuse the Grantee's compliance with any obligations that existing laws and regulations place on the Grantee.
- h. The Grantee shall perform and abide by all commitments identified in its Application.
- i. The Grantee shall comply with all Federal, state, and local laws, ordinances, codes, rules, regulations, and licensing requirements, and DOE policy and guidance that are applicable to the conduct of its business.
- j. The Grantee is in compliance with the Grant Agreement.

15. Insurance: During the term of the Grant Agreement, the Grantee shall ensure that its contractors provide commercial insurance of such type and with such terms and limits as is reasonable and customary for businesses undertaking the type of activity to be undertaken by the Grantee. At a minimum, contractors insurance coverage shall include:

- (a) **Worker's Compensation** - The Grantee shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Grantee's employees. The Grantee shall require any Subgrantee to provide the same coverage for any of its employees engaged in any work related to the Center.
- (b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- (c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in performance of the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$25,000.00 medical payment.

The Grantee's contractors may meet its requirements of maintaining specified coverage and limits by demonstrating to the Agency that there is in force insurance with equivalent

coverage and limits. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. Contractors shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Grant Agreement. The limits of coverage under each insurance policy maintained by the Grantee's contractors shall not be interpreted as limiting the Grantee's liability and obligations under the Grant Agreement.

- 16. Incorporation of Application Representations and Commitments.** The Grantee's representations and commitments made in the Application or as part of the Application process are incorporated herein by reference, as if set out in full, and are deemed to be material to the Grant Agreement.
- 17. Waiver of Default.** Failure of the Agency at any time to require performance of any term or provision of the Grant Agreement shall in no manner affect the rights of the Agency at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Agency of any condition or the breach of any term, provision or representation contained in the Grant Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
- 18. Assignment.** Grantee shall not assign any of its rights or obligations under the Grant Agreement.
- 19. Choice of Law, Jurisdiction, Venue.** The validity of the Grant Agreement and all of its terms and provisions, as well as the rights and duties of the Parties, are governed by the laws of the State of North Carolina. The Grantee agrees and submits, solely for matters concerning the Grant Agreement, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of the Grant Agreement and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.
- 20. Time is of the Essence:** Time is of the essence in the performance of this Grant Agreement.
- 21. Amendment:** This Grant Agreement may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Agency and the Grantee, except that, from time to time, DOE issues (i) amendments and clarifications to the DOE award agreement that is the source of funding for this Grant Agreement, (ii) implementing regulations for the Program, and (iii) implementing guidance for the Program, all of which shall be binding on the Grantee without additional written amendment to this Grant Agreement. Grantee shall periodically consult the Agency and its website and the DOE Program website and the SEO website to obtain the modifications.
- 22. Beneficiaries.** This Grant Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors. Enforcement of the terms and conditions of the Grant Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Agency, the State Auditor and other State entities, and the Grantee, and their respective successors and assigns. Nothing contained in the Grant Agreement shall give or allow any claim or right of action whatsoever by any third person (other than the Agency, as specifically provided herein). It is the express intention of the Agency and Grantee that any person or entity, other than the Agency or the Grantee, receiving services or benefits under the Grant Agreement shall be deemed an incidental beneficiary only.
- 23. No Agency Relationship.** The Grantee and its employees, officers and executives are not employees or agents of the State or any agency thereof; nor are the State, its employees, officers and executives, agents or employees of the Grantee. This Grant Agreement shall not operate as a joint venture, partnership, trust, agency, or any other business relationship.
- 24. Entire Agreement.** This Grant Agreement constitutes the entire agreement between the Parties as to the matters set forth herein, and supersedes all prior agreements and

understandings, both written and oral, between the Parties with respect to the subject matter hereof.

- 25. Interpretation of Agreement.** Each Party acknowledges that, in executing the Grant Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of the Grant Agreement. This Grant Agreement shall not be construed against any Party by reason of the drafting or preparation thereof.
- 26. Severability.** If any provision or part of the Grant Agreement is held to be invalid, illegal or unenforceable, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable, and the validity, legality or enforceability of the remainder of the Grant Agreement will not in any way be affected or impaired, but shall remain in full force and effect, unless the invalidity, illegality or unenforceability completely nullifies the Grant Agreement.
- 27. Limitation on State's Liability.** Neither the Agency or any State entity, department, board, or subdivision, shall be liable in any manner whatsoever to any person, other than the Grantee with respect to explicit commitments under the Grant Agreement. The Grantee's rights, if any, with respect to Award funds arise solely out of the Grant Agreement, and it has no independent right or claim to receive Award funds apart from any right or claim which may arise under the Grant Agreement.
- 28. Indemnification.** The Grantee agrees to indemnify and hold harmless the SEO, the Agency, the State, and all State officers, agents and employees, from any claims of third parties arising out of any act or omission of the Grantee in connection with the performance of the Grant Agreement.
- 29. Force Majeure.** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 30. Contractors and sub-contractors.** Any contractor or subcontractor of the Grantee shall be subject to all applicable conditions of the Grant Agreement, including but not limited to audit requirements. The Grantee shall be responsible for the performance of all of its contractors and subcontractors and shall not be relieved of any of the duties and responsibilities of the Grant Agreement. The Grantee is responsible for ensuring that all contractors or subcontractors provide all information to the Grantee and the Agency necessary to permit the Grantee to comply with the Grant Agreement.
- 31. Headings.** The section and paragraph headings in the Grant Agreement are not material parts of the agreement and should not be used to construe the meaning thereof.
- 32. Ongoing Compliance.** The Federal Government has not fully developed ARRA implementing instructions, particularly concerning specific procedural requirements for reporting. In addition to the requirements of the ARRA, the Grantee is subject to any Federal requirements that become effective in the future, that are applicable to this Award.

Appendix C – DOE Award Agreement DE-EE0000157

The Award to the Grantee is funded through DOE Award Agreement DE-EE0000157 and contains certain terms and conditions that are binding on the Grantee and are incorporated into the Grant Agreement, including the following:

- a. Special terms and conditions of DEO Award Agreement DE-EE0000157.
- b. Attachments:

Attachment No.	Title
1	Intellectual Property Provisions
2	Federal Assistance Reporting Checklist
3	Budget Page(s)
4	SEP Narrative Information Worksheets
5	Wage Determinations
- c. Applicable program regulations, 10 CFR Part 420 at <http://ecfr.gpoaccess.gov>.
- d. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>
- e. Application/proposal as approved by DOE.
- f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

The Special Terms and Conditions applicable to the Grantee are provided as follows:
Note that the term “Recipient in the Special Terms and Conditions” below refers to the SEO and subrecipient or subgrantee or subawardee as that term is used in the Grant Agreement. The term “you” refers to the SEO and the Grantee. However, beginning with the section titled SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, the DOE Award Agreement modified the definition of the term “Recipient” to include the Grantee who is a sub-recipient of funds from the SEO.

Resolution of Conflicting Conditions

Any apparent inconsistency between federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

Use of Program Income – Addition

If the Recipient earns program income during the project period as a result of this award, the Recipient may add the program income to the funds committed to the award and use it to further eligible project objectives. The right to program income, as defined by 10 CFR 600 that is generated by the Project shall vest in the SEO as the Recipient of the prime award from DOE. Grantees who wish to expand the scope of their Projects shall consult the SEO and seek a modification to the Award through a modification of the Grant Agreement. Otherwise, program income generated by the Project shall be deducted from the total Amount of the Grantee’s Award.

Statement of Federal Stewardship

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

Site Visits

DOE-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. Grantee 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.

Reporting Requirements

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by federal agencies.
- b. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).
- c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

Publications

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number(s) *DE-EE0000157*."

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

Federal, State and Municipal Requirements

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

Intellectual Property Provisions and Contact Information

- a. Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).
- b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf).

Lobbying Restrictions

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

Notice Regarding the Purchase of American-made Equipment and Products – Sense of Congress

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

Preservation of Open Competition and Government Neutrality Toward Contractors' Labor Relations on Federally Funded Construction Projects

- a. Unless in conflict with State or local laws, you must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this agreement, or pursuant to a subaward to this agreement, do not:
 1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
 2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).
- b. The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
- c. Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering into agreements with labor organizations.

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 or subrecipients 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 this Agreement.

Special Provisions Relating to Work Funded Under American Recovery and Reinvestment Act of 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. Grantee shall use grant funds in a manner that maximizes job creation and economic benefit.

Grantee 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, Grantee, contractors, and subcontractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The federal government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. Grantee will be provided these details as they become available. Grantee must comply with all requirements of the Act.

Definitions

For purposes of these special provisions, 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 April 30, 2012.

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

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

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward as that term is defined in 10 CFR Part 600 (i.e., sub-grant). Recipients must include only applicable special terms and conditions in any contract as that term is defined in 10 CFR Part 600 made with funds from the award (i.e. vendor agreement).

B. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any state or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

Information about this agreement will be published on the Internet and linked to the Web site www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the Web site on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

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

Prohibition on Reprisals: An employee of any non-federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and

Transparency Board, an inspector general, the Comptroller General, a member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a federal agency or their representatives information that the employee believes is evidence of:

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

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

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

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

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.). A form of the notice that meets the requirements of this section is located at the following internet address:
<http://www.recovery.gov/Contact/ReportFraud/Documents/Whistleblower+Poster.pdf>

G. Request for Reimbursement

RESERVED

H. False Claims Act

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

I. Information in supporting of Recovery Act Reporting

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

J. Availability of Funds

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

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Not Applicable to the Grant Agreement.

L. Certifications

With respect to funds made available to state or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A state or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

Reporting and Registration Requirements Under Section 1512 of the Recovery Act

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

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act. Unless the SEO notifies the Grantee in writing that the SEO delegates the reporting responsibility to the Grantee, the SEO will assume responsibility for submitting these reports on behalf of Grantee; thus, Grantee shall submit its reports to the SEO no later than five calendar days after each calendar **month** in which Grantee receives the assistance award in the form designated by the SEO.

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

Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009

The following provisions apply only to public building(s) and public work(s) as defined below:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

None

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the federal government determines that:

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____

Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
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.]*

Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients

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

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify the expenditures for federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

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

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

National Environmental Policy Act (NEPA) Requirements

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

Prohibited project activities include but are not limited to:

- all boiler activities
- steam systems and waste process systems

The project activities listed above will require an individual NEPA review and determination as well as any other project that has not been determined by DOE to be categorically excluded from NEPA. You must submit an environmental questionnaire (ES-1) to the DOE Project Officer for each project activity identified above to allow DOE to conduct an individual NEPA review and determination.

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

Historic Preservation

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 (known in North Carolina as the "North Carolina Department of Cultural Resources") (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), 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>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

Grantee acknowledges that the SEO has entered into a Memorandum of Agreement (MOA) with the SHPO and the DOE dated May 18, 2010, governing the rights and obligations of the parties regarding Section 106 compliance. The SEO hereby assigns and the Grantee assumes the rights and obligations of the SEO under the MOA, as the same may be modified from time to time.

Davis-Bacon Act and Contract Work Hours and Safety Standards Act

Definitions: For purposes of this article, Davis-Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

(1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must

require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of state or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.

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

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

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

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

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

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

(a) Davis-Bacon Act

(1) Minimum wages.

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

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

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

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

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

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

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

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

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

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

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program,

who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

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

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

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

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

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

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

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

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

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Appendix D – North Carolina Office of Economic Recovery and Investment Directives Regarding the American Recovery and Reinvestment Act of 2009

CONTRACT PROVISIONS

Grantee agrees to comply with the following provisions. Failure to comply with any and all provisions herein may be cause for the State Energy Office to issue a cancellation notice to the Grantee.

Reporting Requirements

The Grantee is notified that this project is financed with American Recovery and Reinvestment Act of 2009 (hereinafter, "ARRA") Funds. The Grantee shall ensure that all contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the Grantee shall provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the Grantee's own workforce and any contractors and subcontractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

For reporting purposes, the Grantee and its contractors 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.

Posting with the Local Employment Security Commission

In addition to any other job postings the Grantee normally utilizes, the Office of Economic Recovery & Investment (hereinafter, "OERI") requires that the Grantee and its contractors and subcontractors shall post with the local Employment Security Commission Office all positions for which he intends to hire workers as a result of being awarded this contract. Labor and semiskilled positions must be posted for at least 48 hours before the hiring decision. All other positions must be posted a minimum posting of five days before the hiring decision. The Grantee, its contractor and any subcontractors shall report the new hires in the manner prescribed by the Employment Security Commission and the OERI.

Required Contract Provision to Implement ARRA Section 902

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

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

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds

made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Authority of the Inspector General Provision

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Buy American Provision

Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be manufactured in the United States. The Grantee, its contractors and its subcontractors agree to abide by Section 1605, shall secure documentation that purchases meet the requirements of Section 1605, and shall maintain records of such purchases for inspections by authorized agents of the State of North Carolina and federal agencies. The Grantee and its contractors and subcontractors must obtain written exception from this provision from the agency issuing the contract.

Wage Rate Provision

Section 1606 of the ARRA requires that all laborers and mechanics employed by contractors and subcontractors with funds from the ARRA shall be paid wages at rates not less than the prevailing wage rate under the Davis-Bacon Act. The Grantee, its contractors and subcontractors agree that continuous compliance will be maintained with the Davis-Bacon Act.

Availability and Use of Funds

Grantees understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required State matching funds. Pursuant to Section 1604 of the ARRA, Grantees agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

Whistleblower Provisions

Grantees understand and acknowledge that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and State employees), Article 21 of Chapter 95, NCGS 95-240 through 95-245 (applies to anyone, including State employees), and Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, federal and contract employees. Any employer receiving Recovery Act funds shall post notice of the rights and remedies as required therein (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.). A form of the notice that meets the requirements of this section is located at the following Internet address:
<http://www.recovery.gov/Contact/ReportFraud/Documents/Whistleblower+Poster.pdf>

Outsourcing outside the USA without Specific Prior Approval Provision

The Grantee, its contractors and subcontractors agree not to use any recovery funds from a contract or any other performance agreement awarded by the State of North Carolina, its agencies or political subdivisions for outsourcing outside of the United States, without specific prior written approval from the agency issuing the contract.

Federal, State and Local Tax Obligations

By submission of a proposal, contractors and subcontractors assert and self-certify that all federal, State and local tax obligations have been or will be satisfied prior to receiving Recovery Act funds.

Anti-Discrimination and Equal Opportunity

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations and Executive Orders pertaining to the expenditure of funds.

Office of State Budget and Management Access to Records

OERI requires that the Grantee, its contractors and subcontractors agree to allow the Office of State Budget and Management internal auditors and State agency internal auditors access to records and employees pertaining to the performance of any contract awarded by a public agency.

Use of Recovery Funds

The Grantee, contractors and subcontractors are specifically prohibited from using recovery funds for travel outside the service area or county in which the project is located. The exceptions are travel specifically mandated by the Recovery Act or approved by senior management of the agency executing the contract.

Fixed-Priced Contracts

Fixed-priced contracts (all inclusive type contracts) are the preferred method for using recovery funds to contract for goods, services and construction projects, including design services. Recovery funds shall not be used for any type of cost plus contracts or arrangements that provide a cost plus additional cost that may be listed as profit, overhead, direct/ indirect cost or other factors that will lead to an increase in the contract cost without unilateral agreement.

Appendix E – State Energy Program Guidelines

- A. PROGRAM SUMMARY.** The State Energy Program (the “SEP or the “Program”) is a federally funded program created under Title III of the Energy Policy and Conservation Act and implemented by the U.S. Department of Energy (DOE) through grants to states, including North Carolina.

The purpose of the Program is to

1. Save energy (kWh/therms/gallons/BTUs/etc)
2. Increase energy generation from renewable sources; and
3. Reduce greenhouse gas emissions.

The goal of SEP programs funded by the American Reinvestment and Recovery Act of 2009 is also to create or retain jobs. The goal for North Carolina under its State Energy Plan is to reduce per capita energy consumption by at least 25% of its 1990 per capita energy use by 2012. SEP funds are subject to the DOE regulations of 10 CFR Part 420 and financial management regulations of 10 CFR Part 600.

The SEO will administer the disbursement of funds in the SEP in the manner set forth in these Guidelines. Capitalized terms contained herein have the meanings ascribed to them in Section B of these Guidelines.

The SEO will issue a Funding Opportunity for each Program funding cycle, which describes Application requirements for an Award under that Funding Opportunity, including specific selection criteria for Projects. The Funding Opportunity will specify available Award amounts and the dates during which Applications may be submitted (the “Solicitation Period”). A particular Funding Opportunity may target and be limited to certain types of Projects and Eligible Entities.

Eligible Entities will apply for an Award by submitting a completed Application in response to, and in compliance with, a Funding Opportunity. An Eligible Entity may receive only one (1) Award during a Solicitation Period.

The SEO will review Applications either on a rolling, first-come, first-served basis, or based on the group of all Applications submitted by a fixed calendar date, as specified in the governing Funding Opportunity after the close of the Solicitation Period. In either case, the making of Awards is always subject to the availability of unencumbered funds for the Program under that Funding Opportunity.

B. DEFINITIONS.

1. *Applicant* – An Eligible Entity that submits an Application.
2. *Application* – A response to a Funding Opportunity that includes all of the following: Application Information Form, executed Grant Agreement Form, Proposal and Required Forms.
3. *Award* – A grant to the Applicant of funds for one or more Projects under a Funding Opportunity.
4. *Closing Date* - The last date for receipt of an Application and all required supplemental materials under a Funding Opportunity.
5. *Eligible Entity* – An organization, local government or State agency that meets the criteria set forth in a Funding Opportunity to be qualified to be chosen for an Award.
6. *Funding Opportunity* – A document announcing the availability of Awards and inviting the submission of Applications for funding, as described in Section D of these Guidelines.
7. *Grant Agreement* – The agreement between the North Carolina Department of Commerce and a Grantee, governing the terms of an Award.

8. *Grantee* – An Applicant that has been approved to receive an Award.
9. *Guidelines* – The procedures for the award of grants under the State Energy Program by the SEO and Application requirements for Applicants.
10. *Performance Period* – The time period over which the Project described in a Proposal is to be performed.
11. *Project* – A plan of work that is focused on the funding objectives of the Funding Opportunity.
12. *Proposal* – The part of an Application, prepared by the Applicant, that contains all required elements enumerated in the Funding Opportunity, regarding details of the proposed Project(s). A Proposal may contain one or more Projects.
13. *SEO* – The State Energy Office, a division of the North Carolina Department of Commerce.
14. *Solicitation Period* – The time period during which Applications in response to a specific Funding Opportunity will be accepted.

C. FUNDING OPPORTUNITIES. Funding Opportunities shall be issued by the SEO, inviting Eligible Entities to submit Applications for Awards, during a specified Solicitation Period. Funding Opportunities shall be posted on the SEO's Web site, www.energync.net. Funding Opportunities shall set forth the Solicitation Period, Award amount available, eligibility requirements, funding objectives, Application and reporting requirements and other application forms.

No Applications submitted in response to a Funding Opportunity will be accepted after its Closing Date or, with respect to Funding Opportunities that accept Applications on a rolling basis, after all funds available for that Funding Opportunity have been encumbered.

These Guidelines are incorporated into all Funding Opportunities.

D. ELIGIBILITY. At a minimum, an Applicant must satisfy the following conditions in order to be eligible to submit an Application:

1. The Project activities must be undertaken in North Carolina.
2. The Applicant may not apply for a second Award for activity which the Applicant already has received an Award under a previous Funding Opportunity.
3. An Applicant that, in the judgment of the SEO, has failed to correct a material breach of a Grant Agreement under any program administered by the SEO, is ineligible to submit an application.
4. An Applicant who is debarred, suspended or otherwise excluded from or ineligible for participation in federal or State financial assistance activities is ineligible for an Award.
5. The Applicant must be current on all tax obligations to the local, State and federal governments.

Each Funding Opportunity may provide for additional eligibility requirements applicable to such Funding Opportunity. To be eligible for funding under this Program, Applicants will be required to demonstrate that the proposed Project is technically sound and to be undertaken by an Applicant with the necessary technical, financial and management capacity.

E. APPLICATION REQUIREMENTS

Application, Timing, and Scope. Applicants must fully comply with all requirements of these Guidelines and the relevant Funding Opportunity within the Solicitation Period. Applications that do not include ALL of the documents specified in a Funding Opportunity, or that contain documents that have not been fully completed, may be considered incomplete and will be removed from consideration for an Award without further review. At its discretion, the SEO

may request supplemental materials from the Applicant, and such materials must be received within fifteen (15) days of the date of the request or the Application may be removed from consideration for an Award.

Execution of Grant Agreement by Applicant. The Grant Agreement Form must be executed by the Applicant and included with the Application. See also Section J on these Guidelines.

Use of Required Forms. Applicants must complete in their entirety the Required Forms provided in a Funding Opportunity.

Proposal. The Proposal must include, among other things specified in the Funding Opportunity:

- Project Overview
- Project Summary
- Project Description
- Monitoring and Verification
- Firm or Organization Background and Experience
- Budget
- Matching Funds (if required)

F. LIMITATIONS ON AWARDS. An Applicant may receive no more than one Award for all Projects for which funding is requested during the period covered by a specific Funding Opportunity. If an Applicant wishes to seek funding for more than one Project, the Applicant must include all Projects in a single Application.

G. APPLICATION REVIEW AND APPROVAL. Applications will be reviewed by the SEO, the Review Committee, and the OERI to ascertain compliance with the requirements in a Funding Opportunity after the close of the Solicitation Period.

Proposals may be funded partially, fully or not at all, as determined by the SEO. The SEO may modify individual Award amounts based on availability of funds or waive the maximum grant limitation upon a finding that such modification is appropriate to accomplish the purpose of the Program.

H. GRANT AGREEMENT. Applications will be reviewed by the SEO, the Review Committee, and the OERI to ascertain compliance with the requirements in a Funding Opportunity after the close of the Solicitation Period. Proposals may be funded partially, fully or not at all, as determined by the SEO. The SEO may modify individual Award amounts based on availability of funds.

I. GENERAL TERMS.

1. No oral statement of any person shall modify or otherwise affect the terms and conditions of these Guidelines or of a Funding Opportunity.
2. The SEO may reject any Application that does not comply with the requirements of the Funding Opportunity or Program.
3. The SEO may withdraw a Funding Opportunity at any time.
4. The SEO reserves the right to award less than or none of the funding allotted to a Funding Opportunity, based on the quality and eligibility of Applications.

J. RELEASE OF INFORMATION. All documents submitted to the SEO, including all Application materials, are public records governed by Chapter 132 of the General Statutes and applicable provisions of the General Statutes protecting confidential information. When specific information in an Application is regarded by the Applicant and by law as confidential and not subject to disclosure under the North Carolina Public Records Act, the Applicant should specifically and clearly designate it as such in writing on that portion of the Application in which the information appears. An Applicant should provide an explanation for why

particular information is regarded as confidential. Indiscriminate designations of information as “confidential,” such as form language automatically inserted into e-mails or into the margins of documents, will not be regarded as sufficient designations. Confidential designations must embrace only specific confidential words, numbers, descriptions, etc., and not whole sentences or groups of sentences.

K. PUBLICATION OF GUIDELINES AND FUNDING OPPORTUNITIES. The SEO will publish the Guidelines, all Funding Opportunities and all announcements of Awards on the SEO Web site, www.energync.net.

Appendix F – State Grant Compliance Reporting Requirements

In addition to all other reporting requirements of the Grant Agreement, non-State Grantees shall comply with the all rules and reporting requirements established by N.C.G.S. § 143-6.2 and Title 9, Subchapter 3 of the North Carolina Administrative Code. For convenience, the requirements of 9 N.C.A.C. Subchapter 3M.0205 are set forth in this Attachment. Note that the thresholds addressed below are thresholds for all State funds received by a Grantee in the aggregate and the definition of State funds includes federal funds.

Reporting Thresholds.

There are three reporting thresholds established for grantees and subgrantees receiving State funds. The reporting thresholds are:

- (1) Less than \$25,000 – A grantee that receives, uses, or expends State funds in an amount less than twenty-five thousand dollars (\$25,000) within its fiscal year must comply with the reporting requirements established by 9 N.C.A.C. Subchapter 3M including:
 - (A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted; and
 - (B) An accounting of the State funds received, used, or expended.All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.

- (2) \$25,000 up to \$500,000 - A grantee that receives, uses, or expends State funds in an amount of at least twenty-five thousand (\$25,000) and up to five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
 - (A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;
 - (B) An accounting of the State funds received, used, or expended; and
 - (C) A description of activities and accomplishments undertaken by the grantee with the State funds.All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.

- (3) Greater than \$500,000 – A grantee that receives, uses, or expends State funds and in the amount greater than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
 - (A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;
 - (B) An audit prepared and completed by a licensed Certified Public Accountant for the grantee consistent with the reporting requirement of this Subchapter; and
 - (C) A description of activities and accomplishments undertaken by the grantee with the State funds.All reporting requirements shall be filed with both the funding agency and the Office of the State Auditor within nine months after the end of the grantee's fiscal year in which the State funds were received.