

TOWN OF BOLTON

Request for Proposals

The Town of Bolton, acting on behalf of a regional coalition including the Towns of Bolton, East Arcadia, Navassa, Northwest and White Lake, is requesting proposals (RFP) to replace heating and air conditioner unit and install automatic door openers at the Town of White Lake, located at 1879 White Lake Drive, in White Lake, NC 28337. These improvements will reduce the energy consumption and energy costs of the Town. This project is being financed with American Recovery and Reinvestment Act (ARRA) of 2009 funds through the North Carolina State Energy Office, Energy Efficiency and Conservation Grant Plan.

Complete Request for Proposal packages are available for pick-up at the White Lake Town Hall during normal business hours of Monday thru Friday, 8:30 AM until 5:00 PM. The complete package is also available online at <http://www.lrcog.org>. Prospective bidders are also advised to review the actual special terms and conditions that will apply to any successful bidder. These may be found in full at the following website:
<http://www.nccommerce.com/LinkClick.aspx?fileticket=wZpdEEDpO0M%3d&tabid=2288&mid=6063>

A mandatory pre-bid conference will be held on Thursday, November 17, 2011 at 3:00 PM at the White Lake Town Hall, located at 1879 White Lake Drive, White Lake, NC 28337.

You are invited to submit a bid proposal prior to the bid opening on Wednesday, November 23, 2011 at 10:00AM in the Board Room of the White Lake Town Hall, located at 1879 White Lake Road, White Lake, NC 28337.

Submittals delivered by regular U.S. Postal Service must be addressed to: Jan Hester Maynor, Regional Energy Grant Administrator, Town of White Lake 1879 White Lake Drive, White Lake, NC 28337. Proposals submitted via telegraph, facsimile (FAX) machine, telephone and electronics means, including but not limited to e-mail, in response to this invitation, will not be acceptable.

Submission of any proposal signifies the Contractor's agreement that its' proposal and the content thereof are valid for 120 calendar days following the submission deadline and will become part of the contract that is negotiated between the Town of Bolton and its partners and the successful Contractor. All prices submitted with the proposal shall remain in effect for the 120-day period.

A bid deposit is not required for this proposal.

All proposals are confidential and will not become public knowledge until awarded. The Town of Bolton and its partners reserve the right to award and/ or reject any and / or all proposals and waive any technicalities or irregularities. This contract will not be awarded solely on the basis of cost. Rather the contract for this project will be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the proposal for the performance of the contract.

A contract will be awarded to the firm whose proposal is determined to be the most advantageous to the member jurisdictions of this regional project, with fee and other factors to be considered as outlined in this RPF. The Town of Bolton and its partners encourage proposals from small, minority and female-owned businesses; and does not discriminate on the basis of handicap status. The Town reserves the right to reject any and all bids.

If you have any questions concerning this RFP, please do not hesitate to contact Jan Hester Maynor, Energy Grant Administrator at 910-618-5533, extension 5052 or Jan.Maynor@lumberrivercog.org

Bid Instructions

One original and two signed copies of the bid must be received in a sealed envelope plainly marked "White Lake Bid". The original must be clearly marked as original and signed by the authorized officer of the company in blue or black ink.

Bids must be addressed as follows: Jan Hester Maynor, Regional Energy Grant Administrator, Town of White Lake, 1879 White Lake Drive, White Lake, NC 28337.

Bids must be received prior to bid opening at 10:00 AM on Wednesday, November 23, 2011.

Bid Inquiries

Inquiries about this request should be made to

Jan Hester Maynor, Regional Energy Grant Administrator
Town of White Lake
1879 White Lake Drive
White Lake, NC 28337
Phone: (910) 618-5533 (ext. 5052)
Email: Jan.Maynor@lumberrivercog.org

Notice to Bidders

Bidders are reminded to carefully examine the bid and specifications as well as the terms and conditions upon receipt of this package. Any questions concerning this Bid must be submitted in writing by mail, fax or email prior to bid opening. Requests submitted after that time, WILL NOT be considered.

Award

Award of the bid will be made to the most responsive and responsible bidder whose bid is most advantageous to the Town of Bolton and its project partners. In determining the most advantageous bid, the Town and its partners will consider criteria such as, but not limited to: cost, bidders past performance and references, customer satisfaction and service capability. The Town and its partners may opt to establish alternate selection criteria to protect its best interest or meet performance or operational standards.

Acceptance

A signed contract between the Town and the accepted bidder will be considered sufficient notice of acceptance of bid.

Warranty

The length, time and conditions of warranty must be attached to or stated in the bid document. In such cases where the location of the successful bidder makes it impractical to perform subsequent warranty and check-up service, it shall be the successful bidder's responsibility to make arrangements with an authorized dealer acceptable to the Town of Bolton and its project partners.

Procurement of Green products and technologies

The Town of Bolton and its project partners believe that it is in the interest of public health, safety and welfare and the conservation of energy and natural resources to use and promote environmentally responsible products. The Town and its project partners strive to set a good example of using government specifications and standards that are green or environmentally friendly when making purchases. Whenever available and cost-justified, the Town and its project partners should purchase those materials including the purchase of recycled products containing post-consumer materials rather than residual materials resulting from the processing or manufacturing from another product. To the extent practicable, all products standards shall emphasize functional or performance criteria which do not discriminate against the use of recycled materials.

Procurement of products that are ENERGY STAR qualified:

The Town of Bolton and its project partners shall select, when considering life cycle and cost-effective, ENERGY STAR and other energy efficient products, when acquiring energy-using products. This information will be required by the bidder in their bid submittal.

Warranty

A. Warrant all work as follows:

1. Labor & materials for control system specified shall be warranted free from defects for a period of twelve (12) months after final completion acceptance by the Owner. Control System failures during the warranty period shall be adjusted, repaired, or replaced at no charge or reduction in service to the Owner. The Contractor shall respond to the Owner's request for warranty service within 24 hours during customary business hours.

B. At the end of the final start-up/testing, if equipment and systems are operating satisfactorily to the Owner and Engineer, the Owner shall sign certificates certifying that the control system's operation has been tested and accepted in accordance with the terms of this specification. The date of Owner's acceptance shall be the start of warranty.

Permits

The Contractor shall comply with all codes, laws, regulations, and ordinances which concern the work, and unless otherwise provided herein shall obtain and pay for * all applicable permits, licenses, and certificates.

Electrical and other required County permits are issued by Bladen County.

*Any permit fees to Town of White Lake and its project partners will be waived.

Insurance Requirements

Upon notice of Award, Contractor may submit this form to their insurance agent as this form contains requirements that may be non-standard in the insurance industry.

Contractors shall furnish the Town of Bolton certificates of insurance as follows from company or companies acceptable to the Town and its project partners. The "Town of Bolton and its project partners" should be listed as an additional insured on the required Certificate of Insurance.

Required Certificates

Commercial General Liability Insurance Policy

Contractor shall procure and maintain a Commercial General Liability Insurance Policy, including products and completed operations liability, and contractual liability coverage covering bodily injury, property damage liability and personal injury. The policy or policies must be on any "occurrence" basis unless waived by the Town and its project partners. The policy shall include contractual liability coverage. The policy purchased by the Contractor must be issued by a company authorized to conduct business in the State of North Carolina or by a company acceptable to the Town and its project partners. The policy must include separate aggregate limits per project. Excess liability coverage may be used in combination with the base policy to obtain the limits listed below.

Limits

\$2,000,000 per person

\$2,000,000 per occurrence

Workers Compensation Insurance

Workers' compensation Insurance in accordance with applicable state laws.

Limits

Bodily Injury by Accident - \$500,000 each accident

Certificates to contain policy number, policy limits and policy expiration date of all policies issued in accordance with this contract.

Certificates shall contain the location and operations to which the insurance applies

Certificates shall contain Contractor's insurance coverage. If coverage is included in General Liability, please indicate this on the Certificate of Insurance.

Certificates are to be issued to:

Town of Bolton and its Project Partners
c/o Jan Hester Maynor
30 CJ Walker Road
Pembroke, NC 28372

Payment Terms and Invoicing

Payment for invoices properly submitted will be paid within thirty (30) days of receipt of invoice. Payment will not be made until goods are delivered and installed and accepted as specified. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order.

Scope of Work

- (1) Replacement of the current HVAC system in Town of White Lake Public Works Building with a 2 Ton 14 SEER RUUD split heat pump system, including outside condenser, indoor air handler with 5KW Heater, New Refrigerant Line Set, New Drain Pan and Drain Lines for Air Handler, New Plastic pad for condenser, digital non-programmable thermostat, and replacement of all ductwork and grills
- (2) Installation of automatic door openers for White Lake Fire Department
- (3) Installation of Automatic Doors for White Lake Public Works Building

GENERAL CONDITIONS

RELATED SECTIONS

A. The General Conditions of the Contract, Supplementary Conditions, and General Requirements are a part of these Specifications and shall be used in conjunction with this Section as a part of the Contract Documents. Consult them for further instructions pertaining to this work.

DESCRIPTION / SCOPE OF WORK

- Contractor will schedule the project with the Town of White Lake staff to insure no conflict with the Town's schedule.
- Contractor will follow O.S.H.A. safety regulations during the project.
- Contractor will be responsible for all permits.
- Contractor will insure fire alarm interface is maintained during completion of work.

- Contractor will remove and properly dispose of any debris, providing proof of proper disposal of any hazardous material to the Owner.
- Contractor shall be responsible for any modifications required to accommodate new improvements.
- All necessary upgrades and modifications shall be done by contractor.
- Contractor shall maintain a clean work area free of debris.
- Contractor will provide 2 copies of the product information and any owner's manuals to the Town prior to leaving the completed job site.
- Other requirements as contained in this bid package.

Materials and Equipment

Contractor will provide all materials, equipment and labor, etc. required to complete this work. The Contractor is responsible for re-routing/upgrading any electrical, plumbing, gas line and mechanical systems that will impede the installation of any improvements. The Contractor is responsible for verifying all dimensions and measurements. The Contractor is responsible for all cutting and patching required for the installation of improvements. All work must meet local and state codes for electrical, plumbing, mechanical and fire safety.

CODES AND STANDARDS

A. Work, materials, and equipment shall comply with the rules and regulations of all codes and ordinances of local, state and federal authorities. As a minimum, the installation shall comply with the current editions in effect 30 days prior to receipt of bids of the following codes:

1. National Electric Code (NEC)
2. International Building Code (IBC)
3. International Mechanical Code (IMC)
4. Underwriters Laboratories: Products shall be UL-916-PAZX listed.

Submittals

A. Approval of plan and specifications by the Owner does not relieve the contractor from the contractual obligation to perform the installation of unit in according to specifications and in accordance to manufacturer's recommendations. No work may begin on any segment of this project until the Engineer and Owner have reviewed submittals for conformity with the plan and specifications.

1. Provide the Engineer and Owner, any additional information or data which is deemed necessary to determine compliance with these specifications or which is deemed valuable in documenting the system to be installed.

2. Submit the following within [60] days of contract award:

- a) A complete bill of materials of equipment to be used indicating quantity, manufacturer, model number and country of origin.
- b) Permits and warranty documents for all materials and labor.
- c) Recommended preventive maintenance procedures.

EXAMINATION

A. The contractor shall inspect the site to verify that improvements are installable as shown, and any discrepancies, conflicts, or omissions shall be reported to the Town for resolution before rough-in work is started.

PROTECTION

A. The Contractor shall protect all work and material from damage by his/her work or workers, and shall be liable for all damage thus caused.

B. The Contractor shall be responsible for his/her work and equipment until finally inspected, tested, and accepted. The Contractor shall protect his/her work against theft or damage, and shall carefully store material and equipment received on site that is not immediately installed. The Contractor shall close all open ends of work with temporary covers or plugs during storage and construction to prevent entry of foreign objects.

GENERAL WORKMANSHIP

A. All materials and installation shall comply with acceptable industry specifications and standards for performance, reliability, and compatibility and be executed in strict adherence to local codes and standard practices.

Field Quality Control

A. All work, materials and equipment shall comply with the rules and regulations of applicable local, state, and federal codes and ordinances as identified in this package.

B. Contractor shall continually monitor the field installation for code compliance and quality of workmanship.

Cleaning

- A. This contractor shall clean up all debris resulting from his or her activities daily. The contractor shall remove all cartons, containers, crates, etc. under his control as soon as their contents have been removed. Waste shall be collected and placed in a location designated by the Contractor. Upon completion of the project, Contractor shall properly dispose of any waste, providing proof of proper disposal to the Owner of any hazardous waste.
- B. At the completion of work in any area, the Contractor shall clean all of his/her work, equipment, etc., making it free from dust, dirt and debris, etc.
- C. Contractor shall provide a copy of his firm's solid waste disposal plan prior to the start of work.

Training

- A. Train the designated staff of Owner's representative and Owner to enable them to proficiently operate physical points for the improvements made, and perform routine troubleshooting procedures.

Acceptance

- A. The work included in this project will not be accepted as meeting the requirements of completion until all tests described in this specification have been performed to the satisfaction of the Owner. Any tests that cannot be performed due to circumstances beyond the control of the Contractor may be exempt from the completion requirements if stated as such in writing by the Owner's representative. Such tests shall then be performed as part of the warranty.

Terms and Conditions

The Town of Bolton, acting on behalf of its partners in this funding, reserves the right to reject any and all proposals or parts of a proposal.

All proposals will be considered final. No additions, deletions, corrections or adjustments will be accepted after the due date.

All delivery costs or charges shall be included in the destination price.

Vendors are required to clearly identify any deviations from the specifications in this document

The authorized officer of the company submitting the proposal must sign in blue or black ink.

Contractors are required to clearly identify any deviations from the specifications in this document.

Sealed proposals received after the designated time of the receipt of the sealed proposals will be considered as "No Bid" and "Void" and will not be opened.

The successful bidder is specifically denied the right of using in any form or medium the names of the Town of Bolton, the Town of White Lake or any other public entity included in this project for public advertising unless express written permission is granted.

All bidders must possess the necessary and appropriate business and or professional licenses in their field.

All bids shall remain in effect for one hundred twenty (120) days after proposal is issued.

Bidders shall provide a list of at least three (3) references where similar goods have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

Bids must contain proof of general liability and workers compensation insurance as specified in this package.

Bids must include a signed copy of "Buy American Form". (Form is included in bid package).

Bids must include a copy of the contractor's North Carolina Electrical License.

Bids must include contractor's D.U.N.S. Number.

Bids must include a signed Debarment Form.

Due to funding through the American Recovery and Reinvestment Act (ARRA) of 2009 and provided through the North Carolina State Energy Office, Energy Efficiency and Conservation Grant Plan, terms and conditions for this project also included those special terms and conditions found at <http://www.nccommerce.com/LinkClick.aspx?fileticket=wZpdEEDpO0M%3d&tabid=2288&mid=6063>

Information found at this link is thereby incorporated and included in the terms and conditions required by all bidders responding to this request for proposals.

Reporting and Registration Requirements

The Contractor is notified that this project will be financed with American Recovery and Reinvestment Act of 2009 (hereinafter, ARRA.) Funds. The Contractor shall ensure that all subcontracts and other 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 State shall require that the Contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the Contractor's own workforce and any sub-contractors. 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, Contractor 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 Contractor normally utilizes, pursuant to the requirements of the OERI, the Contractor and its 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 Contractor and its subcontractors shall report the new hires in the manner prescribed by the Employment Security Commission and the OERI in the format provided to Contractor.

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

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.

Federal, State and Municipal Requirements

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

Waste Stream

All sanitary and hazardous waste (e.g. construction and demolition debris, piping, controls material, discarded equipment, debris, and asbestos) generated as a result of work performed must be disposed in accordance the waste management plan.

Fixed-Priced Contracts

Fixed-priced contracts are the preferred method for using recovery funds to contract for goods, services, and construction projects. 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.

Buy American provision

Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be produced in the United States. Contractor and its subcontractors agrees 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 Contractor and its subcontractors must obtain written exception from this provision from the agency issuing the contract. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser (Town of Bolton) or State to recover as damages against the Contractor any loss, expense or cost incurred by the Purchaser or State resulting from any such failure.

Davis-Bacon and Wage Rate Requirements

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, Sub-recipients, Contractor 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, Sub-recipients, and Recipients' or Sub-recipients' 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, Sub-recipient, 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, by a Recipient to an eligible Sub-recipient or by a Sub-recipient to a lower-tier sub-recipient. 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) Sub-recipient - 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)(1) 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 Sub-recipient 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 Sub-recipient, 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 Sub-recipient (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 Sub-recipient (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 Sub-recipient (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, Sub-recipient, the Recipient's and Sub-recipient'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, Sub-recipient, 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 Sub-recipient 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, Sub-recipient, and Recipient's and Sub-recipient'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.

RECIPIENT FUNCTIONS

(1) This delegation of DOE functions to the Recipient applies only to DBA effort performed by Sub-recipients and Contractors under this award. Those functions are not delegated to the Recipient for any DBA effort performed by employees of the Recipient under this award. On behalf of the DOE, Recipient shall perform the following functions:

- (a) Obtain, maintain, and monitor all DBA certified payroll records submitted by the Sub-recipients and Contractors at any tier under this Award;
- (b) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
- (c) Notify DOE of any non-compliance with DBA requirements by Sub-recipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (b) above;

(d) Address any Sub-recipient and any Contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;

(e) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;

(f) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Sub-recipients and Contractors with DBA requirements;

(g) Perform audit services as necessary to ensure compliance by Sub-recipients and Contractors with DBA requirements and as requested by the Contracting Officer; and

(h) Provide copies of all records upon request by DOE or DOL in a timely manner.

(2) All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.

(3) In the event of, and in response to any Freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.

Availability and Use of Funds

Contractors 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, contractors 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

Contractor and its subcontractors 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 85-245 (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. Specifically, the Recovery Act provides that an employee of any non-Federal employer receiving Recovery Act funds, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector

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

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

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

Contractor and its 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 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 Act 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

The Contractor and its 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 for Travel

Contractor and its subcontractors are specifically prohibited from using Recovery Act funds for travel outside the service area or county in which the project is located. The exceptions are for travel specifically mandated by the Recovery Act or approved by the senior management of the State Energy Office.

Termination or Cancellation of Contract

The Owner, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the project. If this contract is terminated, the Owner shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The Owner may terminate this contract in whole or in part, for the Owner's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Owner all equipment (property of Owner), data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Owner shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Owner may complete the work by issuing another contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Owner.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Owner.

Breach of Contract

If the Contractor does not deliver the required services or the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract

price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

The Owner in its sole discretion may, in the case of a termination for breach or default, allow the contractor (an appropriately short period of time) in which to cure the defect. In such cases, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to Owner's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within (ten (10) days) after receipt by Contractor of written notice from Owner setting forth the nature of said breach or default, the Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Owner from also pursuing all available remedies against contractor and its sureties for said breach or default.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the Owner, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and Owner shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If it is later determined by the Owner that the Contractor had an excusable reason for not performing such as a strike, fire, or flood events which are not the fault of or are beyond the control of the Contractor, the Owner, after setting up a new delivery of performance schedule may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Resolution of Disputes

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

Performance During Dispute- Unless otherwise directed by the Owner, the Contractor shall continue performance under this contract while matters in dispute are being resolved.

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

in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies- Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

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

Protest Procedures

To ensure that protests are received and processed effectively the Purchaser shall provide written bid protest procedures upon request. In all instances, information regarding the protest shall be disclosed to the State Energy Office (SEO). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with Purchaser before pursuing remedies through the SEO. Reviews of protests by the SEO will be limited to the Purchaser's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the SEO must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation. An appeal to the Federal Department of Energy must be received by the cognizant Federal Department of Energy regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

Anti-Kickback

Contractor agrees to comply with the Copeland Anti-Kickback Act (18 U.S.C 874) and the requirements of 29 CFR Part 3, which is incorporated into this [contract or agreement or whatever term you use for the legal document] by reference.

Intellectual Property

Contractor acknowledges that intellectual property requirements are addressed at 10 CFR 600.136. Questions regarding intellectual property matters should be referred to the State Energy Office for consultation with 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).

Access to Records and Reports

The Contractor agrees to permit, and require its subcontractors to permit, the Federal Department of Energy, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. 5325(g).

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the Federal Department of Energy Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39 (i)(11).

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the Federal Department of Energy Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

Historically Underutilized Business

Please check the following: Is your organization registered with HUB office? Yes_____ No_____

Is your organization a minority contractor, small contractor, physically handicapped contractor, a woman contractor, a disabled business enterprise, or a non-profit work center for the blind and severely disabled?

Yes_____ No_____

CERTIFICATION REGARDING DEBARMENT, SUPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

(To be submitted with all bids)

(1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

BUY AMERICA CERTIFICATION

(To be submitted with all bids)

With respect to the Buy American provisions of the American Recovery and Reinvestment Act of 2009 (ARRA) under Section 1605, I certify to the best of my knowledge and belief that:

(1) Identification of American-made Iron, Steel and Manufactured Goods: Consistent with the terms of the Project Sponsor's bid solicitation and the provisions of ARRA Section 1605, the bidder certifies that this bid reflect the bidder's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.

(2) Verification of U. S. Production: The bidder certifies that all components contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the bidder agrees that it will provide reasonable, sufficient, and timely verification to the Project Sponsor of the U. S. production of each component so identified.

(3) Documentation Regarding Non-American made Iron, Steel, or Manufactured Goods: The bidder certifies that for any component or components that are not American-made and are so identified in this bid, the bidder has included in or attached to this one or both of the following, as applicable:

- a. Identification of and citation to a categorical waiver published by the U. S. Environmental Protection Agency in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components;
- b. Verifiable documentation sufficient to the Project Sponsor, as required in the bid solicitation or otherwise that the bidder has sought to secure American-made components but has determined that such components are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the bidder under the applicable conditions stated in the bid solicitation or otherwise.

(4) Information and Detailed Justification Regarding Non-American-made Iron, Steel, or Manufactured Goods: The bidder certifies that for any such component

or components that are not so available, the bidder has also provided in or attached to this bid information, including but not limited to the verifiable documentation and a full description of the bidder's efforts to secure any such American-made component or components, that the bidder believes are sufficient to provide and as far as possible constitute the detailed justification required for a waiver under Section 1605 with respect to such component or components. The bidder further agrees that, if this bid is accepted, it will assist the Project Sponsor in amending, supplementing, or further supporting such information as required by the Project Sponsor to request and, as applicable, implement the terms of a waiver with respect to any such component or components.

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Signature of Bidder_____

Printed Name and Title of Bidder_____

Name of Bidder's Company_____

Bidder's Address_____

Bidder's Telephone Number_____

CONTRACTOR'S CERTIFICATE
OF COMPLIANCE TO DAVIS-BACON ACT

(To be submitted with all bids)

Compliance to the Davis-Bacon Act approved March 3, 1931 by the U. S. Congress and all its subsequent amendments including ARRA is to be provided for the contractor's employees during the performance of this contract. The undersigned shall provide to Owner all required documents to certify compliance. Such requirements are incorporated therein and by reference made a part hereof.

(Name of Contractor)

(Signature)

(Name and Title)

(Date)

Incorporated within this request for proposals are the flowdown requirements as in the “Special Provisions Relating Work Funded under American Recovery and Reinvestment Act of 2009” which apply to this funding. All bidders must comply with any and all applicable Federal statute, Federal rule, Office of Management and Budget (OMB) Circular and Government-wide guidance in effect as of the date of such award. These may be found at the following site:
<http://www.nccommerce.com/LinkClick.aspx?fileticket=wZpdEEDp00M%3d&tabid=2288&mid=6063>