
**GLENN HEGAR
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**



**Request for Application (RFA No. EECBG-IIJA1-2024)
Municipally Owned Building Energy Efficiency Retrofits
for the
State Energy Conservation Office (SECO)
Energy Efficiency and Conservation Block Grant Program**

Anticipated Schedule of Events

RFA Issuance:

Date

June 28, 2024

Written Questions Due:

July 10, 2024

Response to Questions Post:

July 12, 2024

Applications Due:

July 26, 2024

Contract Execution:

August 31, 2024

Commencement of Services:

August 31, 2024

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PART I INTRODUCTION AND BACKGROUND

1.1 Introduction

The Texas Comptroller of Public Accounts (“Comptroller”), on behalf of its State Energy Conservation Office (“SECO”), issues this Request for Applications RFA No. EECBG-IIJA1-2024 (“RFA”) to solicit applications from eligible taxpayer-supported Municipally Owned Buildings for reimbursable grants for Energy Efficiency Retrofits. Each entity applying in response to this RFA is hereinafter referred to as an “Applicant.” Any selected Applicant is hereinafter referred to as a “Successful Applicant.”

This RFA has several parts, including:

Part V: Municipally Owned Building Energy Efficiency Retrofits Application

Part VI: Sample Reimbursable Grant Agreement

1.2 Background

SECO administers and delivers a variety of energy efficiency programs which significantly impact energy costs and consumption in institutional, industrial, transportation, and residential sectors. Specifically, these programs provide (1) technical resources to utilize energy efficiency; (2) financial assistance to complete energy retrofits; and (3) educational materials to make the public aware of the necessity for an energy efficient society.

1.3 Program Summary

The Energy Efficiency and Conservation Block Grant (EECBG) Program is designed to assist states, local governments, and Tribes in implementing strategies to reduce energy use, to reduce fossil fuel emissions, and to improve energy efficiency. Subject to SECO funding approval, a total of approximately \$4,371,539.00 in reimbursable grant funding will be made available under this RFA. The reimbursable grant amount available to each Successful Applicant is up to \$250,000.00 per application. Please refer to Parts 4.6 and 4.7 of this RFA for Application requirements.

Local governments are eligible Applicants. These are reimbursement-based grants. Successful Applicants will be required to submit a minimum of two reimbursement requests to SECO as part of the reimbursement request process. Successful Applicant will be required to submit both pre- and post-retrofit photographic documentation for approved projects. Mandatory deliverables such as demonstrating compliance with the Davis-Bacon Act and Build America, Buy America requirements must be submitted with all reimbursement requests. Awarded contracts will have a 12-month completion term.

1.3.1 Eligible buildings. Eligible municipally-owned buildings include

- municipally-owned public meeting areas including activity centers, recreational facilities, pavilions, parks, and libraries; and
- municipally-owned facilities that also serve as emergency shelters during disasters.

The types of improvements eligible include one or more of the following items:

- installation of insulation,
- replacing interior and exterior lighting fixtures with approved high-efficiency LED lighting systems
- installation of approved HVAC units
- weather sealing, and/or retrofit and replacement of windows and doors.

1.4 Solicitation Details

Successful Applicants must be able to begin performance of the contract on or about August 30, 2024, or as soon thereafter as practical.

- This RFA prioritizes disadvantaged communities in accordance with the Climate and Economic Justice Screening Tool of the Department of Energy ([CEJST Map](#)).

- If the current budget allocation will be exhausted or otherwise depleted for any reason, Comptroller may, in its sole discretion, offer Successful Applicants partial funding.
- Maximum funding amount shall not exceed \$250,000.00 per application and all proceeds must be expended by August 30, 2025.

PART II PROGRAM REQUIREMENTS

2.1 Reimbursable Grant Requirements

Successful Applicants awarded under this RFA will be subject to compliance with the following requirements. National Environmental Policy Act and Texas Historical Commission compliance documentation shall be submitted and accepted by SECO prior to project commencement.

1. Applicant expenses will be reimbursed on a “cost reimbursement” basis.
2. The [National Environmental Policy Act](#) requirements must be observed and carried out before project implementation. Successful Applicants shall contact SECO to receive a National Environmental Policy Act document. The Successful Applicant shall review pages 1 and 2 of the document to determine which Bounded Category your project falls under. After the review, the Successful Applicant will email a statement to SECO stating your category.
3. [Texas Historical Commission](#) (THC) requirements must be followed. The THC requirements must be met before project commencement. A copy of THC confirmation should be submitted to SECO.
4. Domestic Preference Requirements for Federal Financial Assistance to Non-Federal Entities. Federal Financial Assistance to Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America (BABA) act under Title IX of the Infrastructure Investment and Jobs Act, Pub. L. 117-58.
5. The Solid Waste Disposal Act, 42 U.S. Code, Chapter 82, must be followed. Successful Applicants will require and ensure the handling, disposal, transportation, record keeping, and final disposition of any substance or construction waste considered harmful, hazardous, or toxic to be in accordance with the applicable Federal, State, or Local laws and regulations. A copy of the disposition letter shall be provided to SECO. The reuse or resale of removed equipment is not allowed.
6. SECO third party technical assistance contractors may conduct periodic on-site monitoring visits on the building retrofit projects.
7. All improvements shall meet or exceed minimum equipment and system efficiency standards established in the 2018 International Energy Conservation Code (“IECC”), or later versions as may be adopted by any local authority.
8. The proposed retrofits and any impacts on existing building systems must comply with applicable building codes such as the National Electrical Code (“NEC”), and the National Fire Protection Association (NFPA).
9. All new equipment and luminaires shall meet the Underwriters Laboratories (UL) standards, and the installation work and modifications performed shall not void the UL rating of any component affected by the work.
10. This project primarily involves energy efficiency retrofits from existing retrofits in a taxpayer-supported municipally owned activity centers, recreational facilities, pavilions, parks, libraries or event centers that serve a emergency shelters during disasters.
11. For projects that involve complicated retrofits, or when retrofit problems exist, the municipally owned communities or recreation centers shall require contractor to provide room-cavity-ratio calculations and/or point-by-point retrofits calculations to verify their proposed energy efficiency retrofits solutions/design.
12. Successful Applicant may choose to utilize in-house electricians for their energy efficiency retrofits installations. However, any electrical work must be supervised by a licensed electrician.
13. Photos demonstrating existing retrofits layout and individual types of retrofits will be required with each application to establish baseline conditions. Photos of completed energy efficiency retrofits must be submitted with the final report.
14. Online Monthly, Quarterly and Final narrative project progress reports are required.
15. Successful Applicant must submit all certifications for specialty trades.
16. SAM Registration. Successful Applicants and their first-tier Subrecipients must register and maintain “active registration” status in the System for Award Management (<https://sam.gov/content/home>) database at all times during which they have active SECO awards. The registration process includes obtaining a Unique Entity Identifier (UEI). While the UEI does not expire, registrations must be updated annually and remain in “active registration” status for the award duration. Successful Applicant must ensure that all potential subrecipients do not enter into a contractual relationship with the recipient unless the subrecipient is in “active registration” status and has an UEI number in the legally prescribed manner.”

17. Compliance with Davis-Bacon Act- Successful Applicant must ensure bids, contracts, and subcontracts contain the applicable wage determination and the Davis-Bacon labor standards clauses found in 29 CFR § 5.5 (Code of Federal Regulations), titled Contract Provisions and Related Matters. The labor standards describe contractor responsibilities and provide remedies for noncompliance. A wage determination (WD) is a set of wages, fringe benefits, and work rules that the United States Department of Labor has ruled to be prevailing for a given labor category in a given locality. Note that if federal and state wage rates apply, contracts must contain both wage decisions/contract standards and employers must pay the higher of the two rates. At the project kick-off meeting, the Successful Applicant must provide the prevailing WD information (www.sam.gov) of the project location to SECO. During the project construction period, Successful Applicant must provide certified payrolls for all labor on the site. The certified payrolls and all data shall be created using form WH-347 or equivalent. No submitted handwritten forms will be accepted.
18. Successful Applicant must complete a level 2 ASHRAE audit before starting their project. Level 2 audit requests must be performed by SECO's technical assistance contractors prior to project commencement. 12 months of utility bills for all EECBG projects are needed before project commencement and 10 months after project completion to calculate energy savings.

2.2 Match Requirements

There is no match requirement for this RFA.

2.3 Installation Requirements- Successful Applicant will be responsible for ensuring compliance with all Installation requirements.

1. Successful Applicant must furnish all labor, materials, and equipment necessary for completing the energy efficiency retrofits.
2. Standard Warranty: All labor and materials for one (1) year from date of substantial completion. All new fixtures shall have a five-year warranty.
3. The specification/requirements for construction and installation of the retrofits replacement systems must meet or exceed equipment and system efficiency standards established in the 2018 IECC or later versions as may be adopted by any local authority having jurisdiction over the project.
4. The proposed retrofits and any impacts on existing building systems must comply with applicable building codes such as the National Electrical Code ("NEC"), and the National Fire Protection Association (NFPA).
5. Light levels: Successful Applicants must conduct pre-retrofit surveys of existing fixture light levels, wattage, and reflector distribution. Post retrofit foot-candles (FC) must meet or exceed existing FC levels and be in compliance with IES standards for the application. Installation shall comply with City's outdoor lighting ordinance(s). Proposed retrofits shall comply with dark-sky ordinance(s) as applicable.
6. During the retrofit, the function and operation of all other existing control systems (timeclock, Building Automation System (BAS), and/or photocell) shall be preserved.
7. New energy efficiency retrofits equipment shall be programmed and tested with the current operating schedules.
8. All energy efficiency retrofits equipment proposed shall be new, manufactured, rated, and certified for the use proposed by the installer. Installations or combinations of equipment proposed under this contract shall at no time violate, invalidate, or disallow any rating or certification such as Underwriter's Laboratories (UL), etc.
9. Commissioning of energy efficiency retrofits, and the associated retrofit controls/systems shall be required.
10. A licensed trade specialist licensed by the Texas Department of Licensing and Regulation must:
 - a. Provide individual name and license number for each trade specialist who supervised the work; and
 - b. Certify that energy efficiency retrofits and fixtures were installed in accordance with manufacturer's recommendations, and that the energy efficiency retrofits and fixtures meet applicable codes for the application.
11. Applicant must certify the following:
 - a. Proper installation in accordance with manufacturer's recommendations;
 - b. Provide a letter stating proper disposal of existing equipment and any hazardous material waste pursuant to Texas Administrative Code, Chapter 335; and
 - c. No conflicts of interest exist with the Applicant.

2.4 Reporting - Successful Applicant will be responsible for compliance with all Reporting requirements following the execution of a contract:

- 1. Certified Payrolls-** Successful Applicant shall:
 - Attend mandatory LCPTracker contractor training sessions as set forth in Attachment Q.
 - Obtain access to LCPTracker software and set up all contractors and subcontractors accordingly.
 - Upload contractor and subcontractor payrolls every 7 days and monitor wage determinations.
- 2. Build America, Buy America (BABA) act** Successful Applicant shall provide SECO with information certifying BABAA compliance prior to the purchase of fixtures and associated equipment.
- 3. Level 2 ASHRAE Audit-** Level 2 audit requests must be performed by SECO's technical assistance contractors prior to project commencement.
- 4. Utility Bills-** 12 months of utility bills for all EECBG projects are needed before project commencement and 10 months after project completion to calculate energy savings.
- 5. Monthly Reports-** Successful Applicant shall provide SECO with a report submitted electronically as a Microsoft Word document through the SECO contract portal each month no later than the 10th day of the following month. The report shall include, at a minimum and as applicable, the following information:
 - Building(s)/areas retrofitted.
 - Retrofit activities; and
 - Total square footage of retrofitted areas.
- 6. Quarterly Reports-** Due every 3 months (based on the state fiscal year) no later than the 10th day of the month following the end of the quarter. The report shall include, at a minimum a recap of the monthly report activities. Reports shall be submitted electronically as a Microsoft Word document through the SECO contract portal in addition to completing the online report.
- 7. Final Report-** Due 30 days after the completion of the project. The report shall include, at a minimum and as applicable, a summary of all monthly reporting. The report shall be submitted electronically as a Microsoft Word document through the SECO contract portal in addition to completing the online report.

**PART III
APPLICANT'S ELIGIBILITY**

3.1 Eligible Applicants

Local governments are eligible to submit Applications in this RFA. Please refer to Parts 4.6 and 4.7 of this RFA for Application requirements.

3.2 Eligible Facilities

Eligible buildings include local municipally-owned public meeting areas such as activity centers, recreational facilities, pavilions, parks, libraries or event centers that also serve as emergency shelters during disasters.

3.3 Eligible Retrofits

Energy efficiency retrofits may take place inside the facilities or on the outside of the facilities. Outdoor parking lots and walkways directly connected to the facilities are also eligible. Parking garages are *not* eligible.

The equipment listed below is eligible for funding under this RFA, including labor and materials directly related to proper installation. Associated professional services such as engineering design are also eligible costs. ***Equipment not specifically listed below is ineligible for reimbursement.*** Successful Applicant shall provide SECO with information certifying BABA compliance prior to the purchase of fixtures and associated equipment.

Eligible Energy Efficiency Retrofits include the following retrofits:

1. ENERGY STAR LED Lighting Fixtures that meet BABA requirements
 - a. New lighting control equipment for the energy efficiency retrofits.
 - b. New LED Parking Lot Lighting one-for-one replacement of existing high intensity discharge (HID) parking lot fixture heads with new suitable LED replacement fixtures and accessories, as required.
 - c. New LED Wall Packs Lighting- Replacement of existing HID/ Incandescent/ Fluorescent security wall packs with new suitable LED replacement fixtures and accessories as required.
 - d. New LED Exterior Covered Walkway Lighting – Replacement of existing HID/ Incandescent/ Fluorescent exterior walkway lighting with new suitable LED replacement fixtures and accessories, as required.
 - e. New lighting control equipment (timeclock, integration into existing building automation control system etc.) for the retrofitted LEDs.

2. ENERGY STAR HVAC Units that meet BABA requirements. Projects or equipment not specifically listed below are ineligible, and the minimum age of the equipment to be replaced is ten (10) years.
 - a. New Direct Expansion ("DX") air conditioning systems.
 - b. Unitary systems that provide both heating and cooling operations from one unit, and related materials such as electrical contacts/disconnects, gas piping/connections, condensate lines and pumps, unit or wall mounted programmable thermostats including any tie-in connection to existing controls, control valves, supply air and return air grills, and hail guards where applicable.
 - c. Rooftop package units (constant air volume or variable air volume systems), and related materials such as roof curb, roof curb adapters, condensate lines, gas piping/connections, control components, heavy duty coil guards, Variable Frequency Drives, supply/return/outside air ductwork and grills, unit or wall mounted programmable thermostats including any tie-in connection to existing controls, and hail guards where applicable.
 - d. Split system units (constant air volume or variable air volume systems), and related materials such as condensing unit mounting pad, refrigerant lines and insulation, electrical disconnect, furnace, DX coils, control components, supply/return/outside air grills, connecting ductwork and insulation, unit or wall mounted programmable thermostats including any tie-in connection to existing controls, and hail guards where applicable.
 - e. Retro-commissioning of control systems where HVAC systems have been replaced.

3. Insulation, weather sealing, windows and doors that meet BABA requirements.
 - ENERGY STAR Certified Insulation that meets BABA requirements (<https://www.energystar.gov/productfinder/product/certified-insulation/results>)
 - ENERGY STAR certified storm windows that meets BABA requirements (<https://www.energystar.gov/productfinder/product/certified-storm-windows/results>)
 - ENERGY STAR certified doors that meets BABA requirements (<https://www.energystar.gov/productfinder/product/certified-windows/results>)

3.4 Ineligible Retrofits

1. Equipment that does not meet Build America Buy America (BABA) requirements.
2. Equipment not specifically listed in the “Eligible Retrofits” section of this RFA are ineligible for reimbursement.
3. Remanufactured or refurbished products are unacceptable and will not be reimbursed.
4. Reuse or resale of removed equipment is unacceptable.
5. Product Mixing, or the use of multiple brands of equipment in this project is not allowed.

3.5 Ineligible Costs

The following are ineligible costs and will not be reimbursed by SECO:

1. Costs for equipment ordered or purchased prior to full execution of the Contract or Agreement by Comptroller’s office.
2. Equipment ordered without prior written consent by the SECO Contract Manager.
3. Energy efficiency retrofits equipment substitutions will be made solely with the express written consent of the SECO Contract Manager
4. Indirect costs, such as general administration and overhead costs.
5. Energy Efficiency Retrofits in new construction.
6. Sales taxes.

3.6 Ineligible Applicants and Facilities

State, non-profit, and private entities are ineligible.

**PART IV
GENERAL INFORMATION**

4.1 Comptroller Rights

In the best interest of Comptroller and the State, Comptroller, in its sole discretion, may amend or modify any provisions of this RFA or withdraw this RFA at any time prior to award of a Contract. Comptroller reserves the right, in its sole discretion, to reject any or all submitted applications or to select one or more qualified Applicants to this RFA without discussion of applications with the respective Applicants.

The decision of Comptroller, or its designee with regard to the above, shall be administratively final. Comptroller, in its sole discretion, may waive administrative deficiencies and/or minor technicalities in applications received. All applications shall become a part of Comptroller’s official procurement files and may be available for public inspection upon execution of a Contract, if any.

4.2 Applicant Obligations

Applications to this RFA are responsible for any expense related to the preparation and submission of the application. Comptroller shall not reimburse any cost that is incurred by the Successful Applicant prior to the effective date of the Contract.

4.3 Schedule of Events

Comptroller anticipates that the selection of Successful Applicant and execution of the Contract, if any, will proceed according to the following approximate schedule:

June 28, 2024	— Issuance of RFA (after 10:00 a.m. CT)
July 10, 2024	— Deadline for Submission of Questions (2:00 p.m. CT)
July 12, 2024	— Electronic Posting of Official Responses to Questions (or as soon thereafter as practical)
July 26, 2024	— Deadline for Submission of Applications (2:00 p.m. CT) (Late applications will not be considered)
August 31, 2024	— Contract Execution (or as soon thereafter as practical)
August 31, 2024	— Commencement of project (or as soon thereafter as possible)
August 31, 2025	— Project completion on or before this date

The times stated in this document refer to Central Time (“CT”), Austin, Texas, where appropriate. Comptroller’s regular office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except national and official State of Texas holidays. All deadlines are subject to change at Comptroller’s sole discretion.

Notices of changes to items directly impacting the original RFA process will be posted on the [Electronic State Business Daily](#) (“ESBD”). Any amendment to this solicitation will be posted as an addendum on the ESBD. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting an application. Applicant’s failure to periodically check the [ESBD](#) for updates will in no way release Successful Applicants from compliance with any requirements in the “addenda or additional information” even if such compliance results in additional costs to meet the requirements.

4.4 Issuing Office

Comptroller, through its Contracts Section, is the Issuing Office and the sole point of contact for this RFA. The Contracts Section is the only office authorized to clarify, modify, amend, alter, or withdraw the specifications, terms, and conditions of this RFA and any contract awarded as a result of this RFA. Upon issuance of this RFA, other employees of Comptroller shall not answer questions or otherwise discuss the contents of this RFA with any Applicants or their representatives. Failure to observe this restriction may result in disqualification of any pending or subsequent application/proposal. This restriction does not preclude discussions unrelated to this RFA. **Except as otherwise indicated, all communications concerning this procurement must be in writing and addressed to the Issuing Office as follows:**

Joseph Madden
Contracts Attorney
Texas Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street, Room 310C
Austin, Texas 78701
E-mail: contracts@cpa.texas.gov

4.5 Questions

Applicants shall submit questions to the Issuing Office SECO [questions contract portal](#), no later than 2:00 p.m. CT by the deadline set forth in the Schedule of Events. On or about the date set forth in the Schedule of Events, Comptroller expects to electronically post answers to the written questions on the [ESBD](#).

4.6 Application

One electronic application (reference Part V) must be submitted through the [application contract portal](#) and received by the Issuing Office no later than 2:00 p.m. by the deadline set forth in the Schedule of Events. Applicants who submit multiple applications must submit each application separately. Late applications will not be considered under any circumstances.

Applicants are solely responsible for verifying Comptroller’s receipt of all applications by the deadline specified above. Faxed and hard-copy applications are not acceptable and will not be considered.

4.7 Submittal Process

Part V is a Word document that must be completed, signed, dated and uploaded into your electronic application. The filename of this document must be labeled with “No. 1 RFA Number_Municipality Name For example, “No. 1, RFA XX-XXX-2024_[Successful Applicant] Baseball Field.” If more than one application will be submitted, name the second application file as “No. 2_RFA XX-XX-2024_[Successful Applicant] Baseball Field” and so forth such that the number included in the file name indicates the priority of the project.

Within the online application, under “Proposer/Applicant” box, the applicant’s name must match the filename of the application, such as “No. 1 RFA XX-XX-2024_[Successful Applicant] Baseball Field.” The number in the Proposer/Applicant box also indicated the priority of the project for your entity. The application filename must match the “Proposer/Applicant” field. Refer to image below.

The image shows a screenshot of an online application form. It contains four input fields with labels and asterisks indicating they are required:

- * Proposer/Applicant**: A text box containing the value "No. 1 RFA-XXX-XX-2024_Entity Name".
- * Vendor ID**: A text box containing the value "12345678900 -".
- * Federal Employers Identification**: A text box containing the value "123456789".
- * Mail Code**: A text box containing the value "000".

4.8 Review Process

Comptroller shall establish an Evaluation Committee. Applications found to be responsive and to be in compliance with this RFA will be distributed to the members of the Evaluation Committee for their review and evaluation. Clarifications on issues raised in the submitted applications by the Evaluation Committee may be sought from individual Applicants. If funds exist after the applicants receive consideration for their number one priority application, additional applications will be considered in the order of their priority. If the current budget allocation is exhausted or otherwise depleted for any reason, Comptroller may, in its sole discretion, offer Applicants partial funding. SECO will contact Applicants who receive preliminary acceptance for contracts by email.

Upon the selection of Successful Applicant, if any, Comptroller shall proceed with contract negotiations and attempt to finalize the contract with the Successful Applicant. If a contract cannot be successfully negotiated within a reasonable period, negotiations will be terminated, and negotiations with the next highest-ranking Applicant may commence. The process may continue until a contract is signed or the RFA is withdrawn. However, Comptroller may at any time, upon failure of negotiations, choose to reissue or withdraw the RFA rather than continue with negotiations.

As soon as possible after the execution of a written contract with Successful Applicant, all other Applications shall be provided with formal notification.

In the event of a tie in scoring, SECO reserves the right to select the municipally owned building with the smallest population within a disadvantaged community in accordance with Climate and Economic Justice Screening Tool of the Department of Energy ([CEJST Map](#)) for 2021-2022.

4.9 Selection Criteria

Applications will be reviewed based on the criteria enumerated below. The Evaluation Committee will score and then rank all applications. The highest ranked applications will be awarded optimal funding until funds are exhausted. SECO shall evaluate and score each application based on the following:

- Type of existing energy efficiency retrofits;
- Municipally Owned Communities or Recreation Centers location in a “disadvantaged community” in accordance with Climate and Economic Justice Screening Tool of the Department of Energy (Energy Justice Dashboard [\(CEJST Map\)](#));
- Age of Municipally Owned Building correspondent

The total highest points that can be attained is 100. SECO will award funds based on the total number of points assigned to each application. Properly completed applications and eligible projects will be processed based on criteria discussed above until funds are exhausted.

4.10 Sample Contract

A contract agreement awarded under this RFA, if any, will be based on the Sample Contract included as Part VI of this RFA. Each Applicant must review the terms and conditions in Part VI and otherwise in this RFA and address any concerns or issues in writing with its application. Terms and conditions not specifically objected to at the time of the application will be deemed to be accepted by Applicant. Comptroller has final approval of any contract agreement awarded as a result of this RFA.

If awarded, all projects shall be completed on or before August 31, 2025.

Under Section 322.020 of the Texas Government Code, the [Legislative Budget Board](#) (“LBB”) has implemented a database of state agency contracts. See the LBB website. Comptroller shall upload to the LBB’s contract database the text of the complete Contract, including Successful Applicant’s application (with limited redaction and appendix) no later than ten (10) days after date of Contract award. In submitting an application in response to this RFA, Applicant acknowledges they understand and accept this requirement.

**PART V
APPLICATION**

EECBG Municipally Owned Building Energy Efficiency Retrofits Application
RFA No. EECBG-IIJA1-2024

SECTION 1: GENERAL INFORMATION

1.A APPLICANT'S INFORMATION

- Name of Applicant: _____
- Mailing Address: _____
- City / State / Zip Code: _____
- Federal Employer Identification Number ("FEIN" or "EIN")
- Texas Tax Identification/Registration Number, if any: _____
- DUNS Number: _____
- Proposer Date: _____
- **Total Amount Requested:** \$ _____

1.B SIGNING AUTHORITY

- Name: _____
- Title: _____
- Telephone: _____
- Email Address: _____

1.C PRIMARY CONTACT

- Name: _____
- Title: _____
- Telephone: _____
- Email Address: _____

1.D SECONDARY CONTACT

- Name: _____
- Title: _____
- Telephone: _____
- Email Address: _____

1.E ADMINISTRATIVE CONTACT FOR ACCOUNTING

- Name: _____
- Title: _____
- Telephone: _____
- Email Address: _____

1.F SIGNATURE AUTHORITY

Signature and Certification by Authorized Signatory of Applicant

By signature hereon, Applicant represents and warrants that:

- (1) The undersigned signatory has full authority to submit this application and to enter into any contract resulting from this RFA on behalf of Applicant;
- (2) Applicant has reviewed the RFA and the Sample Contract Agreement and will comply with all the terms and conditions set forth in the RFA and the Sample Contract Agreement if awarded a contract under this RFA; and
- (3) The contents of this Application are true and correct to the best of Applicant’s knowledge.

Signature	Title
Printed Name	Date

SECTION 2: PROJECT DESCRIPTION

2.A DESCRIPTION OF EXISTING ENERGY EFFICIENCY RETROFITS TO BE REPLACE WITH NEW ENERGY EFFICIENCY RETROFITS EQUIPMENT.

In this section, provide a detailed narrative description of the existing energy efficiency retrofits to be replaced with new energy efficiency retrofits, the functional area(s) (i.e. parking lot, waiting room, hallways, etc.) where the retrofits will be replaced, and include how the existing retrofits are controlled/turned on and off (ex: on/off wall switch, mechanical/electronic timeclock or controlled through the building energy management system). The narrative should also describe the quantity of retrofits in each functional area where retrofits will be replaced. (Attach additional sheet, if necessary).

2.B TABLE OF EXISTING ENERGY EFFICIENCY RETROFITS AND PROPOSED RETROFIT PLAN

Complete the table below for the retrofits to be replaced by providing the building name & function type, existing retrofit type, proposed energy efficiency retrofit fixture, and new measures.

A	B	C	D	E	F
Line Item	Building Name (ex: [Successful Applicant] Community Center)	Function Area(s) (ex: Bleachers, Field Parking lot)	Existing Measures	Proposed Retrofits	New Measures (Existing areas with new retrofits)
1					
2					
3					
4					
5					
6					
7					
8					

2.C PROPOSED ENERGY EFFICIENCY RETROFITS PLAN AND PROPOSED RETROFITS EQUIPMENT

In this section, provide a description of the energy efficiency retrofits plan to convert existing measures areas with new retrofits. Include building area description, existing retrofits and proposed controls type equipment, describe coordination with building staff and/or contractor assigned, permits and inspection process for energy efficiency retrofits installations, Complete Table 2B. Attach additional sheets, if necessary.

2.D DESCRIBE THE EXISTING PROCESS FOR IMPLEMENTING THE PROPOSED RETROFITS

2.E WHAT BENEFITS WILL THESE RETROFITS PROVIDE TO THE MUNICIPALLY OWNED BUILDING? (ATTACH ADDITIONAL SHEET, IF NECESSARY.)

2.F IS THIS YOUR ORGANIZATION'S FIRST TIME RESPONDING TO AN RFA ISSUED BY SECO?

- Yes
- No

Project Experience

Is this the first time you are considering the energy efficiency retrofits for your facilities?

- Yes
- No

SECTION 3: EVALUATION FORM AND SCORING SHEET

	Total Possible Points	Score Assigned by Applicant
<p>3.3 Is your Municipally Owned Building located in or share a boundary with an area designated as a “Disadvantaged Community” (DAC) in accordance with the Climate and Economic Justice Screening Tool of the Department of Energy (CEJST Map). Attach screenshot to application.</p> <ul style="list-style-type: none"> ➤ Yes, located in DAC- score 50 points ➤ Share a boundary with a DAC- score 25 points ➤ Not located in or does not share a border with a DAC- score 10 points 	50	
<p>3.4 How old is your activity center, recreational facility, pavilion, park, library or facility serving as an emergency shelter during disasters?</p> <ul style="list-style-type: none"> ➤ Older than 20 years, score 25 points ➤ 10 – 20 years, score 15 points ➤ Less than 10 years, score 5 points <p>Insert the age of the building here _____</p>	25	
<p>3.5 What is the total population by place of the municipality where the building is located?</p> <ul style="list-style-type: none"> ➤ Fewer than 10,000 residents, score 25 points ➤ 10,000 – 50,000 residents, score 20 points ➤ More than 50,000 residents, score 10 points <p>Population Estimates by Texas State Demographer – use 2022 “Total Population By Place” reference website: https://demographics.texas.gov/Estimates/2022/ .</p> <p>Insert the population number here _____</p>	25	
Maximum Base Score	100	
Total Score Assigned By Applicant		

**PART VI
SAMPLE CONTRACT**

STATE OF TEXAS * STATE ENERGY CONSERVATION OFFICE
AGREEMENT
COUNTY OF TRAVIS * # _____
(b)

**INTERLOCAL AGREEMENT
FOR THE MUNICIPALLY OWNED COMMUNITIES OR RECREATION CENTERS
ENERGY EFFICIENCY RETROFITS PROGRAM**

This interlocal agreement (“Agreement”) is entered into by and between the Texas Comptroller of Public Accounts (“Comptroller”), State Energy Conservation Office (“SECO”) and _____ (“[Successful Applicant]”) located at _____.

I. Recitals

Whereas, on June 28, 2024 Comptroller issued a Request for Applications No. EECBG-IIJA1-2024 (“RFA”) for Municipally Owned Communities or Recreation Centers to convert to the energy efficiency retrofits;

Whereas, [Successful Applicant] submitted an application on or before _____, 2024, in response to Comptroller’s RFA (“Application”);

Whereas, [Successful Applicant] was selected as a Successful Applicant;

Whereas, under this Agreement, [Successful Applicant] shall fully comply with all terms, conditions, requirements and other provisions of this Contract, including those set forth in the Attachments attached hereto and incorporated herein for all purposes; and

Whereas, in consideration of [Successful Applicant]’s compliance with all requirements of this Contract, Comptroller awards this Contract to the [Successful Applicant].

Now, therefore, the parties hereby agree as follows:

II. Authority

This Agreement is entered into pursuant to authority granted in Chapter 403, Section 403.11, Texas Government Code; Chapter 447, Texas Government Code; the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code; the Interlocal Cooperation Act, Chapter 791, Texas Government Code; and the State of Texas Oil Overcharge Funds Disbursement Plan. Funding for this program is provided by federal funds approved by the United States Department of Energy (“DOE”).

III. Services

[Successful Applicant] shall provide to Comptroller all of the services and deliverables described in and in the manner required by this Agreement all of the following documents (“Services”) as attached hereto and incorporated as part of this Agreement for all purposes. All terms and conditions of Comptroller’s RFA shall apply.

Attachment A: Statement of Services to be Performed;
Attachment B: Budget;

<u>Attachment C-1:</u>	Assurance of Compliance, Nondiscrimination in State Assisted Programs;
<u>Attachment C-2:</u>	Assurance of Compliance, Nondiscrimination in State Assisted Programs;
<u>Attachment D:</u>	Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions;
<u>Attachment E:</u>	Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements;
<u>Attachment F:</u>	Disclosure of Lobbying Activities;
<u>Attachment G:</u>	Assurances – Non-Construction Programs;
<u>Attachment H:</u>	Intellectual Property Provisions;
<u>Attachment I:</u>	Subcontracting Provisions; Mandatory Flowdown Provision;
<u>Attachment J:</u>	Execution of Application;
<u>Attachment K:</u>	Nondisclosure Agreement;
<u>Attachment L:</u>	Comptroller’s RFA;
<u>Attachment M:</u>	[Successful Applicant]’s Application;
<u>Attachment N:</u>	Build America, Buy America
<u>Attachment O:</u>	Davis-Bacon Act
<u>Attachment P:</u>	LCPTTracker Flow Chart
<u>Attachment Q:</u>	LCPTTracker Training Schedule

-In the event of a conflict, the documents shall control in the following order of precedence:

1. This Agreement, excluding Attachments;
2. Attachments A and B;
3. Attachments C-1 through H;
4. Attachment I;
5. Attachment P;
6. Attachment N;
7. Attachment J;
8. Attachment K;
9. Attachment L;
10. Attachment M;

[Successful Applicant]’s performance under this Agreement is limited to the requirements set forth in this Agreement, including services reasonably related to satisfying those requirements.

[Successful Applicant] represents and warrants that it has the requisite qualifications, experience, personnel and other resources to provide all of the required Services to Comptroller in the manner required by this Agreement. Comptroller shall look solely to [Successful Applicant] for performance of this Agreement. [Successful Applicant] shall provide the services under the direction of Comptroller. [Successful Applicant] shall be the sole point of Contract responsibility. [Successful Applicant] shall be liable, both individually and severally, for the performance of all obligations under this Contract, and shall not be relieved of the non-performance of any subcontractor.

IV. Payments

Total payments to [Successful Applicant] under this Agreement shall not exceed _____ **DOLLARS** (\$____,____.____). [Successful Applicant]’s payments under this Agreement are limited to reimbursements of actual authorized costs incurred pursuant to the budget provided in Attachment B. No other amounts shall be paid. Each month, [Successful Applicant] shall submit to Comptroller each request for payment by submitting a detailed invoice to Comptroller, listing expenses by budget categories. [Successful Applicant] shall submit invoices that are fully supported by receipts and such other documentation. Comptroller reserves the right, in its sole discretion, to withhold payment of invoices for which [Successful Applicant] does not submit documentation acceptable to Comptroller. [Successful Applicant] shall submit monthly invoices for equipment purchased, services performed and costs incurred in the prior month.

Comptroller reserves the right, in its sole discretion, to authorize revisions to budgeted amounts to provide for flexibility within budget categories. Comptroller must give prior approval of all such revisions through its execution of a written amendment to this Agreement. [Successful Applicant] may submit a request for reimbursement after contract termination provided the eligible expenses were incurred during the term of the Agreement.

V. Term

The term of this Agreement shall begin on the date executed by Comptroller, after having first been signed by [Successful Applicant], and shall be effective until August 30, 2025 (“Termination Date”) unless terminated earlier in accordance with other provisions of this Agreement. Notwithstanding the termination or expiration of this Agreement, the provisions of this Agreement regarding confidentiality, indemnification, payments, records, and dispute resolution shall survive the termination or expiration dates of this Contract.

VI. Termination

Comptroller reserves the right, in its sole discretion, to terminate this Agreement at any time, with or without cause, upon thirty (30) days’ written notice to [Successful Applicant].

Upon receipt of notice of termination from Comptroller, [Successful Applicant] shall immediately cease to submit monthly statements or requests for reimbursement and shall cancel, withdraw or otherwise terminate any outstanding orders or commitments under this Agreement as of the effective date of such termination and shall otherwise cease to incur any costs. [Successful Applicant] cannot incur new costs after termination but can seek reimbursement for eligible costs incurred during the Agreement term. Comptroller shall have no liability whatsoever for any costs incurred after such termination date. Upon termination for a breach of this Agreement or failure to comply with the terms of this Agreement, [Successful Applicant] may be required to return any or all grant funds to Comptroller.

VII. Records Retention, Right to Audit, and Monitoring

A. Retention of Records. [Successful Applicant] shall maintain and retain fiscal records and supporting documentation for all expenditures related to this Agreement at its principal office adequate to ensure that claims for grant funds are in accordance with applicable Comptroller and State of Texas requirements. [Successful Applicant] shall maintain all such documents and other records relating to this Agreement for a period of seven (7) years after the date of submission of the final invoice or until a resolution of all billing questions, whichever is later.

B. Access to Records. [Successful Applicant] shall give DOE, the Inspector General, the General Accounting Office, the Auditor of the State of Texas, Comptroller, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by [Successful Applicant] pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by [Successful Applicant]. [Successful Applicant] shall cooperate with auditors and other authorized representatives of Comptroller and the State of Texas and shall provide them with prompt access to all such property as requested by Comptroller or the State of Texas. By example and not as exclusion to other breaches or failures, the [Successful Applicant]’s failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize Comptroller to immediately terminate this Agreement. [Successful Applicant] agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, Chapter 552 of the Texas Government Code.

C. Right to Audit. Comptroller may require, at [Successful Applicant]’s sole cost and expense, independent audits by a qualified certified public accounting firm of [Successful Applicant]’s books and records or the State’s property. The independent auditor shall provide Comptroller with a copy of such audit at the same time it is provided to [Successful Applicant]. Comptroller retains the right to issue a request for applications for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or

investigation of [Successful Applicant] or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by [Successful Applicant] or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, [Successful Applicant] or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code. [Successful Applicant] shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors or sub-contractors through the [Successful Applicant] and the requirement to cooperate is included in any subcontract it awards. The state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the [Successful Applicant] relating to this Agreement.

D. Monitoring. Comptroller may also carry out monitoring and evaluation activities to ensure [Successful Applicant]'s compliance with the programs that are the subject of this Agreement and to make available copies of all financial audits and related management letters of [Successful Applicant] and any subcontractors as required under any applicable federal or state law or guidelines.

VIII. Indemnification

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, [SUCCESSFUL APPLICANT] SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND COMPTROLLER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF [SUCCESSFUL APPLICANT] OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY [SUCCESSFUL APPLICANT] WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND [SUCCESSFUL APPLICANT] MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. [SUCCESSFUL APPLICANT] AND COMPTROLLER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

IX. Subcontracting

[Successful Applicant] may subcontract or sub-grant for the purposes of this Agreement as specifically authorized by Comptroller pursuant to the terms and subject to compliance with the flow down provisions of Attachment I of this Agreement.

X. Amendments

This Agreement may only be amended upon the written agreement of the parties by executing an amendment to this Agreement; however, Comptroller may unilaterally amend this Agreement as provided in Section XVIII.

XI. Notice

Any notice relating to this Agreement, which is required or permitted to be given under this Agreement by one party to the other party shall be in writing and shall be addressed to the receiving party at the address specified below. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address specified below. It shall be deemed to have been given on the date of certified receipt if placed in the United States mail, postage prepaid,

by registered or certified mail with return receipt requested, addressed to the receiving party at the address specified below. Registered or certified mail with return receipt is not required for copies.

Comptroller: Texas Comptroller of Public Accounts
State Energy Conservation Office
111 E. 17th Street
Austin, Texas 78774

[Successful Applicant]: [Successful Applicant Name]
[Address]

XII. Funding

Comptroller's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Comptroller of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate cancellation or termination, without penalty to Comptroller, subject to the availability and receipt of these funds. In addition, Comptroller's authority and appropriations are subject to the actions of the Texas Legislature. If Comptroller becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, Comptroller may terminate this Agreement without penalty to Comptroller or the State of Texas. In the event of a termination or cancellation under this Section, Comptroller shall not be required to give notice and not be liable for damages or losses caused or associated with such termination or cancellation.

XIII. Insurance

[Successful Applicant] has and will maintain in force during the term of this Agreement insurance coverage or an adequate program of self-insurance to cover its indemnification obligations under this Agreement. As a political subdivision of the State of Texas, [Successful Applicant] will address issues of general liability in accordance with the Texas Civil Practice and Remedies Code, Chapter 101 (the Texas Tort Claims Act) and Chapter 102 (Tort Claims Payments by Local Governments). [Successful Applicant] will maintain Workers' Compensation insurance in the amounts required by state and federal law.

XIV. Assignment

[Successful Applicant] shall not transfer or assign any rights or duties under or any interest in this Agreement. [Successful Applicant] shall not delegate its responsibilities or duties under the terms of this Agreement.

XV. Property Rights

For the purposes of this Agreement, the term "Work" is defined as all reports, work papers, work products, materials, approaches, designs, specification, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under this Agreement. [Successful Applicant] owns and will continue to own all right, title and interest and all proprietary rights in and to the Work and any and all documentation or other products and results of the services rendered by [Successful Applicant], including all trade secret, copyright, patent, trademark, and other proprietary rights.

[Successful Applicant] hereby grants Comptroller a perpetual, royalty-free, nonexclusive, irrevocable, transferable, worldwide license for governmental purposes to use, reproduce, distribute, display, and perform the Work and to prepare derivative works based thereon. Additionally, upon delivery of the Work to Comptroller, and upon full payment to [Successful Applicant] hereunder by Comptroller for such Work, Comptroller shall be deemed to have paid all non-commercial license, support, maintenance, subscription, and other fees of any kind, and [Successful Applicant] understands and agrees to this provision.

In the event that either party intends to use, reproduce, display, or perform such Work for commercial purposes, the parties agree in good faith to negotiate the applicable license.

No later than the first calendar day after the termination or expiration of this Agreement or at Comptroller's request, [Successful Applicant] shall deliver to Comptroller all completed, or partially completed, Work and any and all documentation or other products and results of these services. Failure to timely deliver such Work and any and all documentation or other products and results of services shall be considered a material breach of this Agreement.

In the event of any conflicting provisions between this Section and Attachment H, Attachment H shall control.

Title to and control over equipment or license of any software so purchased for [Successful Applicant]'s performance under this Agreement shall remain with [Successful Applicant] so long as it is being used for the purpose for which it was intended under the terms of this Agreement.

XVI. Severability Clause

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

XVII. Dispute Resolution Process

Chapter 2260 of the Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Comptroller has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, and may adopt revisions to these rules throughout the term of this Agreement, including any extensions. [Successful Applicant] shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Comptroller and [Successful Applicant] to attempt to resolve any claim for breach of contract made by [Successful Applicant] under this Agreement:

- (A) [Successful Applicant]'s claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, [Successful Applicant] shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Comptroller and [Successful Applicant] otherwise entitled to notice under this Agreement. Compliance by [Successful Applicant] with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- (B) The contested case process provided in Chapter 2260 is [Successful Applicant]'s sole and exclusive process for seeking a remedy for an alleged breach of contract by Comptroller if the parties are unable to resolve their disputes under subparagraph (A) of this Section.
- (C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code. Neither the execution of this Agreement by Comptroller nor any other conduct of any representative of Comptroller relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply:

Should a dispute arise out of this Agreement, Comptroller and [Successful Applicant] shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to

be chosen by Comptroller and [Successful Applicant] within fifteen (15) days after written notice by one of them demanding mediation under this Section. [Successful Applicant] and Comptroller shall pay all costs of the mediation equally. By mutual agreement, Comptroller and [Successful Applicant] may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Comptroller and [Successful Applicant] shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Comptroller's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Comptroller of: (1) any rights, privileges, defenses, remedies or immunities available to Comptroller as an agency of the State of Texas or otherwise available to Comptroller; (2) Comptroller's termination rights; or (3) other termination provisions or expiration dates of this Agreement.

XVIII. Applicable Law and Conforming Amendments

[Successful Applicant] shall comply with all state and federal laws, regulations, requirements and guidelines applicable to a [Successful Applicant] providing services to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Comptroller reserves the right, in its sole discretion, to unilaterally amend this Agreement prior to award and throughout the term of this Agreement to incorporate any modifications necessary for Comptroller's or [Successful Applicant]'s compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended by the written agreement of the parties.

XIX. Additional Provisions

19.1 Time Limits

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

19.2 No Waiver

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Comptroller or otherwise available to Comptroller or [Successful Applicant]. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Comptroller or [Successful Applicant] under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Comptroller or [Successful Applicant] do not waive any privileges, rights, defenses, or immunities available to them by entering into this Agreement or by their conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller or [Successful Applicant] must be in writing, must reference this Section, and must be signed by Comptroller and [Successful Applicant] to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

19.3 No Liability upon Termination

If this Agreement is terminated for any reason, Comptroller and the State of Texas shall not be liable for any damages, claims, losses, expenses, costs or any other amounts arising from or related to any such termination.

19.4 Limitation on Authority; No Other Obligations

[Successful Applicant] shall have no authority to act for or on behalf of Comptroller or the State of Texas except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. [Successful Applicant] may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Comptroller.

19.5 No Other Benefits

[Successful Applicant] shall have no exclusive rights or benefits other than those set forth herein.

19.6 Force Majeure

Except as otherwise provided, neither [Successful Applicant] nor Comptroller shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, terrorist attacks, fires, explosions, earthquakes, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

19.7 Debts or Delinquencies to State

[Successful Applicant] acknowledges and agrees that, to the extent [Successful Applicant] owes any debt or delinquent taxes to the State of Texas, any payments or other amounts [Successful Applicant] is otherwise owed under or related to this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes [Successful Applicant] owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time [Successful Applicant] owes any such debt or delinquency. [Successful Applicant] shall comply with rules adopted by the Comptroller under Sections 403.055, 403.0551, and 2252.903 of the Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

Furthermore, [Successful Applicant] acknowledges and agrees that any obligation to refund or return grant funds based on termination or breach of this Agreement entered into by [Successful Applicant] and Comptroller creates “a debt to the state” for purposes of Section 403.055 of the Texas Government Code. [Successful Applicant] further acknowledges and agrees that the terms of this Agreement are sufficient to create a debt by agreement between the [Successful Applicant] and Comptroller. Comptroller agrees that it shall provide [Successful Applicant] the opportunity to contest the amount due or the existence of a breach through an internal administrative review process which shall be determined by Comptroller. Applicant’s failure to return any amount owed upon conclusion of Comptroller’s administrative review process shall allow Comptroller to use the warrant-hold process under Section 403.055 of the Texas Government Code as a means of enforcing [Successful Applicant]’s compliance with the terms of the Grant Agreement or to recover grant funds required to be returned by [Successful Applicant] under the terms of this Agreement.

If [Successful Applicant] is a “local government entity” as defined under Section 271.151 of the Texas Local Government Code, [Successful Applicant] acknowledges and agrees that this Agreement is a written contract stating the essential terms for providing services to [Successful Applicant], and therefore, this Agreement is subject to Chapter 271, Subchapter I, of the Local Government Code which waives sovereign immunity for certain breach of contract claims.

19.8 No Conflicts

[Successful Applicant] represents and warrants that [Successful Applicant] has no actual or potential conflicts of interest in providing services to Comptroller under the Contract and that [Successful Applicant]’s provision of services under the Contract would not reasonably create an appearance of impropriety. Without limitation on the foregoing, other disclosures required under this Contract, and other prohibited work provisions of this Contract, [Successful Applicant] shall, throughout the term of this Contract, comply with and provide all of the following: provide to Comptroller, upon request, a copy of [Successful Applicant]’s most recent audit, if any, together with a full disclosure

of any and all internal control weaknesses, if any; disclose and describe in detail [Successful Applicant]’s most recent peer review, if any, stating the date of the review and irregularities, if any, and concluding comments; disclose and describe in detail any emerging irregularities, if any, that could materially affect Comptroller’s interests; and disclose and describe in detail how [Successful Applicant] examines whether [Successful Applicant]’s outside auditors provide consulting or other services to [Successful Applicant] or [Successful Applicant]’s clients or to Comptroller.

19.9 Comptroller’s Anti-Fraud Policy

[Successful Applicant] represents and warrants that it has read and understood and shall comply with Comptroller’s Anti-Fraud Policy located on Comptroller’s website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of this Agreement.

19.10 Texas Public Information Act; Confidential Information

Each party is responsible for complying with the provisions of Chapter 552, Texas Government Code (Texas Public Information Act) and the Attorney General Opinions issued under that statute. Comptroller and [Successful Applicant] expect that all information exchanged between them will be public information. In the event confidential information is exchanged, Comptroller and [Successful Applicant] shall comply with all applicable state and federal laws and regulations regarding confidentiality, privacy, and security of information. Responses to requests for confidential information shall be handled in accordance with the provisions of the Texas Public Information Act.

19.11 Patent, Trademark, Copyright and Other Infringement Claims

[Successful Applicant] shall defend and indemnify Comptroller and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from Comptroller’s or [Successful Applicant]’s use of or acquisition of any services or other items provided to Comptroller by [Successful Applicant] or otherwise to which Comptroller has access as a result of [Successful Applicant]’s performance under this Agreement, provided that Comptroller shall notify [Successful Applicant] of any such claim within a reasonable time of Comptroller’s receiving notice of any such claim. If [Successful Applicant] is notified of any claim subject to this Section, [Successful Applicant] shall notify Comptroller of such claim within five (5) working days of such notice. If Comptroller determines that a conflict exists between its interests and those of [Successful Applicant] or if Comptroller is required by applicable law to select separate counsel, Comptroller shall be permitted to select separate counsel and the reasonable costs of such Comptroller’s counsel shall be paid by [Successful Applicant]. [Successful Applicant] shall make no settlement of any such claim without Comptroller’s prior written approval. [Successful Applicant] shall reimburse Comptroller and the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys’ fees and court costs, arising from any such claim. [Successful Applicant] represents that it has determined what licenses, patents and permits are required under this Agreement and has acquired or will acquire all such licenses, patents and permits prior to commencement of services under this Agreement.

19.12 DTPA; Unfair Business Practices

[Successful Applicant] represents and warrants that it has not been the subject of a Deceptive Trade Practices Act (DTPA) or any unfair business practice administrative hearing or court suit and that [Successful Applicant] has not been found to be guilty of such practices in such proceedings. [Successful Applicant] certifies that it has no officers who have served as officers of other entities who have been the subject of a DTPA claim or any unfair business administrative hearing or court suit and that such officers have not been found to be guilty of such practices in such proceedings.

19.13 Immigration

[Successful Applicant] represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Reform and Immigrant Responsibility Act of

1996 regarding employment verification and retention of verification forms for any individuals hired, who will perform any labor or services under this Agreement. [Successful Applicant] also represents and warrants that it shall comply with the requirements of the Immigration Act of 1990 enacted on November 29, 1990, regarding creation of the lottery system for granting visas, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 enacted on September 30, 1996 which created three year, ten year and permanent bars to entrance into the United States.

19.14 Antitrust

Pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq., [Successful Applicant] represents and warrants that neither [Successful Applicant] nor any firm, corporation, partnership, or institution represented by [Successful Applicant], nor anyone acting for such firm, corporation or institution has violated Texas antitrust laws or federal antitrust laws, nor communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business.

19.15 Texas Family Code

Under Section 231.006, Texas Family Code (relating to child support), [Successful Applicant] certifies that the individual or business entity named in this Agreement is eligible to receive payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

19.16 Criminal Conviction Certification

[Successful Applicant] certifies that neither [Successful Applicant] or any of its employees, agents, or representative, including any subcontractors and employees, agents, or representative of such subcontractors, to be assigned to the services hereunder, has been convicted of a felony criminal offense, or that if such a conviction has occurred or occurs during the term of this Agreement, [Successful Applicant] will immediately fully advise Comptroller as to the facts and circumstances.

19.17 Financial Interests; Gifts

[Successful Applicant] represents and warrants that neither [Successful Applicant] nor any person or entity which will participate financially in this Agreement has received compensation from Comptroller for participation in preparation of specifications for this Agreement. In addition, under Section 2155.004, Texas Government Code, [Successful Applicant] certifies that it is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate. [Successful Applicant] represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Agreement. [Successful Applicant] certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency.

19.18 Buy Texas

[Successful Applicant] represents and warrants that, in accordance with Section 2155.4441, Texas Government Code, it shall purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time.

19.19 False Statements; Breach of Representations

By signature to this Agreement, [Successful Applicant] makes all the representations, warranties, covenants, and certifications included in this Agreement. Notwithstanding any provision of this Agreement to the contrary, if [Successful Applicant] signs this Agreement with a false statement or it is subsequently determined that [Successful Applicant] has violated any of the representations, warranties, covenants or certifications included in this Agreement, [Successful Applicant] shall be in default under this Agreement and Comptroller may terminate or void this Agreement

for cause and pursue other remedies available to Comptroller under this Agreement and applicable law.

19.20 Prohibited Use of Appropriated or Other Funds Under Control of State Agency; Lobbying

[Successful Applicant] represents and warrants that Comptroller's payment to [Successful Applicant] and [Successful Applicant]'s receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005, 556.0055, or 556.008, Texas Government Code.

19.21 Certification Concerning Hurricane Relief

Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, [Successful Applicant] certifies that the individual or business entity named in this Agreement is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certifications inaccurate.

19.22 Debarred Vendors List

[Successful Applicant] represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that [Successful Applicant] is in compliance with the State of Texas statutes and rules relating to procurement and that [Successful Applicant] is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

19.23 Drug Free Workplace

[Successful Applicant] represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 and maintain a drug-free work environment.

19.24 No Boycott-State of Israel

Pursuant to Section 2270.002 of the Texas Government Code, [Successful Applicant] does not boycott Israel and will not boycott Israel during the term of the Contract.

19.25 Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, [Successful Applicant] certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

19.26 Foreign Terrorist Organizations

[Successful Applicant] represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

19.27 Energy Company Boycotts

[Successful Applicant] represents and warrants that: (1) it does not, and will not for the duration of this Agreement, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the term this Agreement, [Successful Applicant] shall promptly notify CPA.

19.28 Firearm Entities and Trade Associations Discrimination

[Successful Applicant] verifies that: (1) it does not, and will not for the duration of this Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the term of this Agreement, [Successful Applicant] shall promptly notify CPA.

19.29 COVID-19 Vaccine Passport Prohibition

Under Section 161.0085 of the Texas Health and Safety Code, [Successful Applicant] certifies that the individual or business entity named in this Agreement is not ineligible to receive this Agreement.

XX. Merger

This Agreement, and its accompanying attachments, contain the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

XXI. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

Texas Comptroller of Public Accounts

[Successful Applicant]

By: _____

By: _____

Lisa Craven
Deputy Comptroller

Name
Title

Date: _____

Date: _____

ATTACHMENT A

SAMPLE DELIVERABLES STATEMENT

- A. [Successful Applicant] shall perform all of the deliverables described in this Attachment A, or otherwise required by this Agreement. These deliverables include, but are not limited to, the furnishing of all personnel and the procurement of all equipment, supplies, and other items necessary to provide those deliverables in compliance with this Agreement. [Successful Applicant] shall provide all services in accordance with the Standards of Performance of this Agreement. [Successful Applicant] shall review and implement Comptroller recommendations, as Comptroller adopts them from time to time, so that the deliverables may be expeditiously and satisfactorily completed. [Successful Applicant] shall meet with Comptroller at such times as Comptroller may reasonably request to discuss the progress of deliverables and any other matters that may arise in regard to this Agreement.
- B. Deliverables and Milestones

Sample Deliverables and Milestones	Schedule
1. Implementation retrofit schedule.	TBD
2. Monthly Update of Project Activities The report shall include, at a minimum and as applicable, the following information: <ul style="list-style-type: none">○ Building retrofitted;○ Number of buildings retrofitted; and○ Square footage retrofitted	By 10 th of the month
3. Quarterly Update of Project Activities The report shall include, at a minimum and as applicable, the following information: <ul style="list-style-type: none">○ Summary of monthly reports.	By 10 th of month after state qtr.
4. Final Report The report shall include, at a minimum and as applicable, the following information: <ul style="list-style-type: none">○ Summary of all monthly reporting.	At Project Completion

ATTACHMENT B

SAMPLE BUDGET

[This will include final agreed Budget, to be negotiated in accordance with terms of the RFA and Sample Contract.]

Personnel¹	\$ 0.00
Subcontract	\$ 0.00
Equipment	\$ 0.00
Supplies and Materials	\$ 0.00
TOTAL	\$ 0.00

¹ PROJECT MANAGER NAME, shall be Project Director for this project and shall be responsible for the overall supervision and conduct of the project on behalf of [Successful Applicant]. Any Change of Project Director shall be subject to the prior written approval of Comptroller.

ATTACHMENT C-1

DOE F 1600.5
(06-94)
All Other Editions Are Obsolete

OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY Assurance of Compliance Nondiscrimination in State Assisted Programs OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

_____ (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related

information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

Name of Organization

Telephone Number

Address

Authorized Official:

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

ATTACHMENT C-2

DOE F 1600.5
(06-94)
All Other Editions Are Obsolete

OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY Assurance of Compliance Nondiscrimination in State Assisted Programs

OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

(Enter name of Recipient's Subcontractor) _____ (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color,

national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signatures appear below and who are authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee of Subcontractor

_____ Name and Title (Printed or Typed)	_____ Telephone Number
_____ Signature	_____ Date

Subcontractor:

_____ Name of Organization	_____ Telephone Number
_____ Address	

Authorized Official of Subcontractor:

_____ Name and Title (Printed or Typed)	_____ Telephone Number
_____ Signature	_____ Date

ATTACHMENT D
**Certification Regarding Debarment, Suspension, Ineligibility,
and Voluntary Exclusion-Lower Tier Covered Transactions**

Instructions for Certification

1. The prospective lower tier participant is required to sign the attached certification.
2. The certification in this clause is a material representation of 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 Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this application 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.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principle," "application," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this application is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this application that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. 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.
9. Except for transactions authorized under 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 Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - (1) The prospective lower tier participant certifies, by submission of this application, 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) 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 application.

Organization Name

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT E
CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

1. 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, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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 and not more than \$100,000 for each such failure.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period receding this application/proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this

certification, such prospective participant shall attach an explanation to this application/proposal.

3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

ALTERNATE I (SUB-RECIPIENTS OTHER THAN INDIVIDUALS)

(1) The Sub-recipient certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Sub-recipient's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing, of his or her conviction for a violation of criminal drug statute occurring in the work-place not later than five calendar days after such conviction;

- (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
 - (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
 - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- (2) The Sub-recipient may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:

(Street address, city, county, state, zip code)

- Check if there are workplaces on file that are not identified here.

ALTERNATE II (SUB-RECIPIENTS WHO ARE INDIVIDUALS)

- (1) The Sub-recipient certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.
- (2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986: OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended [“Simpson-Craig Amendment,” see Section 129 of The Balanced Budget Down payment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name of Applicant

Pre/Award Number and/or Project Name

Printed Name and Title of Authorized Representative

Signature

Date

ATTACHMENT F

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action: _____</p> <p>a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: _____</p> <p>a. bid/offer/application b. initial award c. post award</p>	<p>3. Report Type: _____</p> <p>a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p>Name Address _____ Prime _____ Subawardee Tier, if known:</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p>
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description CFDA Number, if applicable:</p>	
<p>8. Federal Action Number, If known:</p>	<p>9. Award Amount, if known:</p>	
<p>10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>	<p>10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI):</p>	
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ _____ actual _____ _____ Planned</p>	<p>12. Form of Payment (check all that apply):</p> <p>a. cash b. in-kind; specify: nature _____ value _____</p>	
<p>13. Type of Payment (check all that apply):</p> <p>_____ a. retainer _____ c. commission _____ e. deferred _____ b. one-time fee _____ d. contingent fee _____ f. other; specify _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: _____ Yes _____ No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure</p>		<p>Authorized Representative: _____</p> <p>Title: _____</p> <p>Signature: _____</p> <p>Telephone: Date: _____</p>

ATTACHMENT G

ASSURANCES -- NON-CONSTRUCTION PROGRAMS OMB Approval No. 0348-0040

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, Comptroller, the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93- 234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 a-1 et seq.)
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. SAM Registration. Successful Applicants and their first-tier Subrecipients must register and maintain "active registration" status in the System for Award Management (<https://sam.gov/content/home>) database at all times during which they have active SECO awards. The registration process includes obtaining a Unique Entity Identifier (UEI). While the UEI does not expire, registrations must be updated annually and remain in "active registration" status for the award duration. Recipients must ensure that all potential subrecipients do not enter into a contractual relationship with the recipient unless the subrecipient is in "active registration" status and has an UEI number in the legally prescribed manner."
19. Compliance with Davis-Bacon Act- Successful Applicant must ensure bids, contracts, and subcontracts contain the applicable wage determination and the Davis-Bacon labor standards clauses found in 29 CFR § 5.5 (Code of Federal Regulations), titled Contract Provisions and Related Matters. The labor standards describe contractor responsibilities and provide remedies for noncompliance. A wage determination (WD) is a set of wages, fringe benefits, and work rules that the United States Department of Labor has ruled to be prevailing for a given labor category in a given locality. Note that if federal and state wage rates apply, contracts must contain both wage decisions/contract standards and employers must pay the higher of the two rates. At the project kick-off meeting, the Successful Applicant must provide the prevailing WD information (www.sam.gov) of the project location to SECO. During the project construction period, Successful Applicant must provide certified payrolls for all labor on the site. The certified payrolls and all data shall be created using form WH-347 or equivalent. No submitted hand-written forms will be accepted.

- 20. Will comply with the requirements of the Buy America, Build America Act.
- 21. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

ATTACHMENT H
Intellectual Property Provisions

AUTHORIZATION AND CONSENT – ALTERNATE I (48 CFR 52.227-1)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) [2.101](#) on the date of subcontract award. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, does not affect this authorization and consent.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (48 CFR 52.227-2)

The provisions of this clause shall be applicable only if the amount of this grant exceeds \$250.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) This clause shall be included in all contracts and subgrants under this grant.

REPORTING OF ROYALTIES (48 CFR 52.227-6)

If this grant is in an amount which exceeds \$250 and if any royalty payments are directly involved in the grant or are reflected in the grant price to the Government, the Contractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this grant and prior to its completion of final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

RIGHTS IN TECHNICAL - GENERAL – ALTERNATE IV (48 CFR 52.227-14)

(a) Definitions. As used in this clause -

Computer database or database means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software - (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Limited rights means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. 116).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in -

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to -

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the

Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

- (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright -

(1) Data first produced in the performance of the contract. Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor -

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except -

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of

the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor -

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may -

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall -

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) Subcontracting. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to the

Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

RIGHTS TO PROPOSAL DATA (TECHNICAL) (48 CFR 52.227-23)

It is agreed that as a condition of award of this grant or modification and notwithstanding the conditions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others to do so for any purpose whatsoever, the technical data contained in the proposal(s) upon which the grant or modification is based.

Organization Name

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT I

SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION

[Successful Applicant], if subcontracting any of its performance hereunder, shall legally bind subcontractors to perform and make such Subcontractors subject to all the duties, requirements, and obligations of [Successful Applicant] under this Agreement. [Successful Applicant] shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its Subcontractors to the extent permitted under the Constitution and laws of the State of Texas.

[Successful Applicant] represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its Subcontractors under this Agreement. In no event shall any provision of this Attachment I, including, but not limited to, the requirement that [Successful Applicant] obtain the prior approval of Comptroller on [Successful Applicant]'s proposed subcontracts, be construed as relieving [Successful Applicant] of the responsibility for ensuring that all services rendered under any subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by [Successful Applicant]. [Successful Applicant] shall, upon request, furnish Comptroller with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations; provided, however, that this thirty (30) day period may be shortened by written agreement of the parties. Upon request from Comptroller, [Successful Applicant] shall provide any and all documentation deemed necessary by Comptroller to evidence Subcontractors compliance with all terms, conditions and performance pertaining to the Agreement and all applicable law.

As the duly authorized representative of the [Successful Applicant], I hereby certify that [Successful Applicant] and subcontractor will comply with the above requirements.

[SUCCESSFUL APPLICANT]:

By: _____

Name: _____

Date: _____

**ATTACHMENT J
EXECUTION OF APPLICATION**

1. By signature hereon, Applicant represents and warrants that the provisions in this Execution of Application apply to Applicant and all of Applicant's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFA or any contract resulting from it.
2. By signature hereon, Applicant represents and warrants its intent to purchase the subject items at the prices quoted in its Application.
3. By signature hereon, Applicant represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy, located on Comptroller's website at <https://comptroller.texas.gov/about/policies/ethics.php> as such Policy currently reads and as it is amended throughout the term of any resulting contract.
4. By signature hereon, Applicant represents and warrants that its prices include all costs of Applicant in providing the requested items that meet all specifications of this RFA and that its prices will remain firm for acceptance for a minimum of one hundred twenty (120) days from deadline for submission of Application.
5. By signature hereon, Applicant represents and warrants that each employee, including "replacement employees", will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this RFA.
6. By signature hereon, Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to Comptroller under the RFA and any resulting contract, if any, and that Applicant's provision of the requested items under the RFA and any resulting contract, if any, would not reasonably create an appearance of impropriety.
7. By signature hereon, pursuant to Section 2155.003 of the Texas Government Code, Applicant represents and warrants that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Application.
8. By signature hereon, Applicant represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
9. By signature hereon, Applicant hereby represents and warrants that, pursuant to 15 U.S.C. Sec. 1, *et seq.* and Tex. Bus. & Comm. Code Sec. 15.01, *et seq.*, neither Applicant nor the firm, corporation, partnership, or institution represented by Applicant, nor anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws or communicated directly or indirectly the Application made to any competitor or any other person engaged in such line of business.
10. By signature hereon, Applicant represents and warrants that all statements and information prepared and submitted in response to this RFA are current, complete, and accurate.
11. By signature hereon, Applicant represents and warrants that the individual signing this document and the documents made part of this RFA and Application is authorized to sign such documents on behalf

of the company and to bind the company under any contract which may result from the submission of this Application.

12. By signature hereon, Applicant represents and warrants that if a Texas address is shown as the address of Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).

13. Check below if preference claimed under 34 Texas Administrative Code §20.38:

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
- Texas Vegetation Native to the Region
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value
- Commercial production company or advertising agency located in Texas

14. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Applicant certifies that the individual or business named in the Application is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Applicant subject to Section 231.006 of the Texas Family Code must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Application. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name: _____	SSN: _____
Name: _____	SSN: _____
Name: _____	SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

15. By signature hereon, Applicant represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exists between Applicant and an employee of any Comptroller component, and Applicant has not been an employee of any

Comptroller component within the immediate twelve (12) months prior to Applicant's Application. By signature hereon, Applicant certifies that it is in compliance with Section 669.003 of the Texas Government Code, relating to contracting with executive head of a state agency. Enter the name of any current or former executive head of a Texas State Agency that is currently employed by Applicant below:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Applicant: _____

Date of Employment with Applicant: _____

All such disclosures will be subject to administrative review and approval prior to Comptroller entering into any contract with Applicant. Applicant acknowledges that any contract resulting from this RFA may be terminated at any time, and payments withheld, if this information is false.

16. By signature hereon, pursuant to Section 2155.004(a) of the Texas Government Code, Applicant represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFA has received compensation for participation in the preparation of specifications for this RFA. Further, under Section 2155.005(b) of the Texas Government Code, Applicant certifies that the individual or business entity named in this Application or any contract resulting from this RFA is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
17. By signature hereon, Applicant represents and warrants that all articles and services quoted in response to this RFA meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of this solicitation.
18. By signature hereon, Applicant represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
19. By signature hereon, Applicant represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA). Applicant further represents and warrants that it will comply with all applicable Texas Accessibility requirements.
20. By signature hereon, in accordance with Section 2155.4441 of the Texas Government Code, Applicant agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
21. By signature hereon, Applicant represents and warrants that Comptroller's payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this RFA are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.
22. By signature hereon, Applicant represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Applicant is in compliance with the State of Texas statutes and rules relating to procurement and that Applicant is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

23. Sections 2155.006(b) and 2261.053 of the Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five (5) years has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. By signature hereon, the Applicant represents and warrants, in accordance with Section 2155.006 of the Texas Government Code, that the individual or business entity named in its Application is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.
24. By signature hereon, Applicant represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Applicant or any of the individuals or entities included in Part 1 of this document within the five (5) calendar years immediately preceding the submission of Applicant's Application in response to this RFA that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of Applicant's Application. If Applicant is unable to make the preceding representation and warranty, then Applicant instead represents and warrants that it has included as a detailed attachment in its Application a complete disclosure of any such court or governmental agency actions, proceedings, or investigations, etc. that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to Comptroller's consideration of Applicant's Application. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the Agreement.
25. By signature hereon, Applicant represents and warrants that it has read and agrees to all terms and conditions of this RFA.

Authorized signatory on behalf of Applicant must complete and sign the following:

_____ Authorized Signature	_____ Date Signed
_____ Printed Name and Title of Authorized Signatory	_____ Phone Number
_____ Applicant Name	_____ Fax Number
_____ Federal Employer Identification Number	_____ E-Mail Address
_____ Physical Street Address	_____ City, State, Zip Code
_____ Mailing Address, if different	_____ City, State, Zip Code
_____ DUNS Number	

ATTACHMENT K

NONDISCLOSURE AGREEMENT

In consideration of the Texas Comptroller of Public Accounts (“Comptroller”), considering an application/proposal from or meeting with _____ (“Contractor”) regarding proposed services and because of the sensitivity of certain information which may be provided to Contractor, both parties agree that all information regarding Comptroller, or gathered, produced, collected or derived from or related to these services or provided to Contractor as a result of these services (“Confidential Information”) must remain confidential subject to release only upon prior written approval of Comptroller, and more specifically agree as follows:

1. The Confidential Information may be used by Contractor only to assist Contractor in connection with its engagement with Comptroller.
2. Contractor shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as contractor to Comptroller.
3. Contractor agrees to maintain the confidentiality of any and all Confidential Information related to the Agreement in the same manner that it protects the confidentiality of its own proprietary information of like kind.
4. The Confidential Information may not be copied, reproduced, disclosed or distributed without Comptroller's prior written consent.
5. All Confidential Information made available to Contractor, including copies thereof, must be returned to Comptroller upon the first to occur of: (a) termination or expiration of the Agreement or (b) request by Comptroller.
6. The foregoing must not prohibit or limit Contractor’s use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, (b) independently developed by it, (c) acquired by it from a third party, or (d) which is or becomes part of the public domain through no breach by Contractor of this agreement.
7. This Nondisclosure Agreement shall become effective as of the date Confidential Information is first made available to Contractor and shall survive any contract resulting from the RFA and be a continuing requirement.
8. The breach of this Nondisclosure Agreement by Contractor shall entitle Comptroller to immediately terminate this Agreement upon written notice to Contractor for such breach. The parties acknowledge that the measure of damages in the event of a breach of this Nondisclosure Agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether Comptroller elects to terminate the Agreement upon the breach hereof, Comptroller may require Contractor to pay to Comptroller the sum of \$5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to Comptroller in the event of a breach hereof by Contractor of this Nondisclosure Agreement. Comptroller does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this Nondisclosure Agreement.

Contractor Name

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT L

Comptroller's RFA

Comptroller's RFA No. EECBG-IIJA1-2024, issued _____, 2024, and Comptroller's Official Responses to Questions from Potential Applicants issued _____ (collectively "RFA"), are incorporated by reference for all purposes into this Agreement as Attachment A of this Agreement. In the event of a conflict between Comptroller's RFA and a RFA Addendum, the RFA Addendum shall control.

ATTACHMENT M

[Successful Applicant]’s Application

[Successful Applicant]’s Application dated [insert date], is incorporated by reference for all purposes into this Agreement as Attachment M of this Agreement.

ATTACHMENT N- BUILD AMERICA, BUY AMERICA CERTIFICATION

Project Number: _____

Project Title: _____

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure (see definition below) may be obligated for a project (see definition below) unless all of the iron, steel, manufactured products, and construction materials (see definition below) used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Build America, Buy America (BABA) preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project. Applicants must provide itemized list of products used in project to SECO prior to ordering materials to ensure BABA compliance.

Definitions

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

- “Construction materials” includes an article, material, or supply that is or consists primarily of: non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States

Build America, Buy America Waiver Requests:

Where applicable, Recipients may apply for, and the Department of Energy (DOE) may grant a waiver from these requirements. Waivers are granted solely at the discretion of DOE following review (<https://www.energy.gov/management/doe-buy-america-requirement-waiver-requests>). As of 6/25/2024, the only waiver opportunity available is a Nonavailability waiver.

Recipients must notify SECO of their interest in submitting a waiver prior to project commencement. Waiver requests may take up to 90 days to process.

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) that it will meet Build America, Buy America requirements in Section 70914 of the Bipartisan Infrastructure Law

P.L. 117-58, using one of the following provisions (*Proposer must select the applicable provision*):

_____ The infrastructure project/product contains no steel or iron products, manufactured products or construction materials manufactured outside the United States per Section 70914 of the Bipartisan Infrastructure Law, P.L. 117-58. If there is ANY foreign steel or iron, manufactured products or construction materials in your infrastructure project/product you may not check this box.

_____The project/product has foreign steel or iron, manufactured products, or construction materials; a Build America, Buy America waiver is required. The Contracting Entity may, but is not obligated to, seek a waiver of Build America, Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Build America, Buy America requirements if a waiver of those requirements is not available or not pursued by the Contracting Entity. The waiver process can take time and the project may not move forward until a waiver is completed.

A false certification is a criminal act in violation of 18 USC 1001. Should this Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.

Proposer: _____

Signature of Authorized Official: _____

Name of Authorized Official: _____

Title: _____

Date: _____

ATTACHMENT O CERTIFICATION REGARDING DAVIS-BACON ACT

As the duly authorized representative of the Contractor, I certify that the Contractor will comply with the applicable requirements of the Davis-Bacon Act (41 U.S.C. 3141 et seq.), including but not limited to:

- Obtain wage determination (“WD”) and monitor it through contract award.
- Ensure all bid, contract, and subcontract documents and sole source contracts contain the WD and Davis-Bacon labor standards clauses (prime contractor and sub-contractors).
- For prime contracts over \$100,000, comply with Contract Work Hours and Safety Standards Act (CWHSSA).
- Ensure no contracts are awarded to ineligible contractors.
- Ensure the Davis-Bacon poster and wage determination are posted at work site.
- Collect and submit certified payroll reports and statements of Davis-Bacon compliance for the contractor personnel and for all sub-contractors weekly.
- Designate personnel to submit certified contractor and sub-contractor payrolls via LCPTracker hosted by the United States Department of Energy (<https://prod-cdn.lcptracker.net/login/login>)
- Spot-check payroll reports/related records and update payrolls in the event that they are rejected in LCPTracker.
- Conduct and save confidential, onsite interviews using Standard Form 1445, Labor Standards Interview.
- Periodically review use of apprentices and trainees.
- Report all alleged Davis-Bacon violations within a week of the violation.
- Maintain full documentation of payrolls, certifications, interview forms, etc., for 3 years after project completion in the event the Office of Inspector General examines the project.

Wage Determination (WD)

Prior to issuing a request for bids or proposals, the Contractor must obtain the WD for the project area by accessing Wage Determinations at [SAM.gov/content/wage-determinations](https://sam.gov/content/wage-determinations), then Public Building or Works or Service Contracts option, the state and county where the work will be performed, and the DBA construction type. Make sure the checked Status box is active. The Contractor must include the generated WD document in all bid specifications and resulting contracts. If you are unsure about the funding source, a project can be bid with alternates—one including federal wage rates and one without. (Note: SAM.gov replaced WDOL.gov)

DBA construction types

The construction types are building, residential, highway, and heavy. The “building” type is for sheltered enclosures, especially with windows, doors, and roofs, that will be occupied at times. Municipalities, county governments, public higher education institutions, and school districts should ask their consulting engineer what type to use if they are unsure. A contract can contain more than one construction type. If over 80% of the project cost falls into one construction type, the municipalities, county governments, public higher education institutions, and school districts can use that type for the WD; this may be a benefit or a detriment depending on the project. Contact your Construction Management Team (CMT) with questions.

Monitor the WD

Once the bids have been opened, the wage determination is valid for 90 days. During the bid advertisement period, municipalities, county governments, public higher education institutions, and school districts or their consulting engineers must monitor [SAM.gov](https://sam.gov) to ensure DOL has not changed the WD. If the WD changes more than 10 days before bid opening, the bid specifications must be amended with the new WD. If contract award is more than 90 days after bid opening, the WD must be updated. The Davis-Bacon wage

determination included in the contract at the time of contract award stays in effect for the duration of the project.

Request additional classifications

If the WD is missing a wage rate needed for a specific work/job classification, construction type, and/or project location, contact your CMT for guidance on requesting a conformance using the Request for Authorization of Additional Classification and Rate Standard Form 1444. The municipalities, county governments, public higher education institutions, and school districts should incorporate the final conformance rate into the bid specifications and construction contracts, and copies of the conformance letter should be kept on file.

Ineligible Contractors

Municipalities, county governments, public higher education institutions, and school districts cannot knowingly award a construction project to a contractor who has been debarred or suspended by the Federal government. During the bid evaluation period, municipalities, county governments, public higher education institutions, and school districts must look up all bidders at SAM.gov/content/exclusions to determine if they are ineligible contractors. Municipalities should make a note of verification in the contract file. Contractors are responsible for verifying the eligibility of sub-contractors. (Note: SAM.gov replaced Excluded Parties List System (EPLS))

Payroll Reports

Municipalities, county governments, public higher education institutions, and school districts must collect certified payroll reports and compliance statements from the prime contractor and sub-contractors weekly, in a timely manner, for every week of contract work and keep them on file for at least three years after project completion. Contractors are responsible for setting up accounts for sub-contractors in LCPTracker and for preparing and submitting payroll reports for its own employees and all sub-contractor employees in LCPTracker. Contractors must attend virtual LCPTracker training sessions offered by DOE set forth in Attachment R. Per 29 CFR 5.5(a)(3)(ii), payroll reports do **not** include full social security numbers and home addresses. A weekly payroll statement must provide the following information:

- Name of contractor or sub-contractor (indicate which)
- Project and location
- Project or contract number
- Name of employee
- Employee identification number (e.g., last four digits of social security number – Do not use full SSN)
- Work/Job classification
- Hourly rate of pay (straight and overtime)
- Daily and weekly number of hours worked
- Deductions made
- Actual wages paid

Along with each payroll report, the contractor (or payment supervisor) must submit to the Contractor a signed statement of Davis-Bacon compliance, such as the one on the back of Payroll Form WH-347.

Review Payroll Reports

To verify that contractors and sub-contractors are paying appropriate wage rates and fringe benefits, municipalities, county governments, public higher education, and school districts must spot-check a representative sample of weekly payroll reports for accuracy at least twice for each contractor and sub-

contractor during the project—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll.

Note: The check boxes on page 1 of the Request for Disbursement Form 8700-215 replaced the DBRA Payroll Certification page. The check boxes serve the purpose of assurance from the Contractor to CMT certifying that Davis-Bacon has been satisfied for each week employees are paid.

Interview Employees

Municipalities, county governments, public higher education, and school districts should periodically conduct and retain confidential, onsite interviews with a sampling of the contractor and sub-contractors' employees to determine whether laborers, mechanics, apprentices, and trainees are being paid in accordance with Davis-Bacon requirements—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll is suggested. The Labor Standards Interview Standard Form 1445 must be completed with every interview and kept on file for at least three years after project completion.

Verify Apprentice and Trainee Registrations

While municipalities, county governments, public higher education institutions, and school districts (or their designated representatives) are onsite conducting Davis-Bacon interviews, they should take the opportunity to review the apprentice and trainee registrations and certifications that the contractor should be able to easily provide upon request. Municipalities, county governments, public higher education institutions, and school districts can use the relevant documents to confirm that the number of apprentices does not exceed the ratio to journeymen allowed by the apprenticeship program plan.

Report Violations

Additional interviews may be completed at the Municipalities, county governments, public higher education institutions, and school districts discretion and are required in the case of questionable payroll reports or employee complaints. Report alleged violations to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the DOL WHD District Office.

Violations include:

- Misclassification of laborers and mechanics.
- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours).
- Inadequate recordkeeping, such as not counting all hours worked by an individual in two or more classifications during a day.
- Failure to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices.
- Failure to submit certified weekly payrolls.
- Failure to post the Davis-Bacon poster and applicable wage determination.

Final Closeout

When the construction activities have reached 95% disbursement of the project amount, CMT will send a final closeout letter to the municipality, county governments, public higher education, or school district, including a Wage Rate Compliance Certification. The municipality, county governments, public higher education, or school district must prepare the certification on letterhead and submit it to SECO prior to receiving the final fund disbursement.

APPLICABILITY OF DAVIS BACON

Site of work

Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work.” The site of work is the physical place or places where the construction is called for in the contract or will remain after work has been completed, and any other site where a significant portion of the building or work is construction, provided that such site is established specifically for the contract. It may also include job headquarters, tool yards, batch plants, borrow pits, etc., provided the properties are located adjacent or virtually adjacent to the “site of work” and dedicated exclusively or nearly so to the performance of the contract or project.

Laborers and mechanics

Laborers and mechanics are employees who work with their hands, have manual or physical duties, or are in specific trades. They include carpenters, plumbers, sheet metal workers, etc., including apprentices and trainees. **The DOL focuses on the actual work being performed by the person, not necessarily the title.** As a general rule, an employee who spends the majority of time in a supervisory position onsite and who spends less than 20% of the work week engaged in skilled labor, is exempt from Davis-Bacon requirements for the percentage of time spent in that skilled time. Clerical staff (timekeepers), professionals (architects, engineers, inspectors), and certain utility installers are also exempt.

Force account employees

Davis-Bacon does not apply to “force account” work in which the Contractor performs the construction in-house with its own “force account” employees rather than contracting out the construction work. Furthermore, the DOL does not consider a state or local government to be a contractor, even if it enters into a contract to perform construction work (see 29 CFR 5.2(h)).

Business owners

Davis-Bacon requirements do **not** apply to the owner of a construction company. However, to be exempt, the owner must be a “business owner” as defined under 29 CFR § 541.101 and be actively engaged in the management of their business. Davis-Bacon would **apply** if the owner were not engaged in management but predominantly performs manual or physical duties of construction work.

Truck drivers

Davis-Bacon does **not** apply to truck drivers employed by the contractor who come on the job site to deliver construction materials because they are not employed “directly upon the site of the work.” Davis-Bacon **does** apply to truck drivers employed by the contractor to move materials on the site of work or from a property located adjacent or virtually adjacent to it. Davis-Bacon does **not** apply to truck drivers employed by the contractor to move materials at any location that existed prior to bid opening (e.g., contractor’s headquarters).

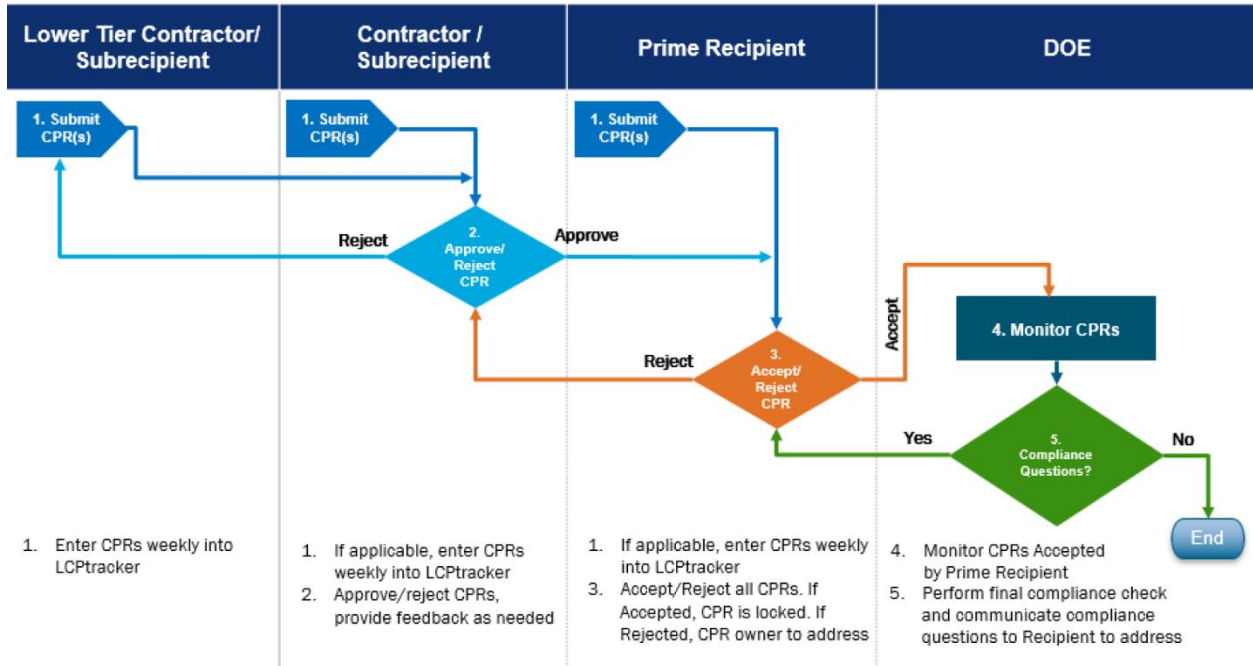
Contractor Name

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT P LCPTRACKER FLOW CHART



ATTACHMENT Q

LCPTRACKER TRAINING SCHEDULE

	Administrator (1 hour each)	Prime Approver (Prime Contractor) (1.5 hours)	Contractor (Prime & Lower Tier) (1 hour each)
LCPtracker Pro Live <ul style="list-style-type: none"> Payroll Entry 1st & 3rd Wed of the month at 1 pm ET 		X	X
LCPtracker Pro Live <ul style="list-style-type: none"> Overview 1st & 3rd Tue of the month at 1 pm ET 	X		
LCPtracker Pro Live <ul style="list-style-type: none"> Settings Thur after 1st & 3rd Tue at 1 pm ET 	X		
LCPtracker Pro Live <ul style="list-style-type: none"> Setup, eDocs, Reports 2nd & 4th Tue of the month at 1 pm ET 	X		
LCPtracker Pro Live <ul style="list-style-type: none"> Hands-On User Setup Thur after 2nd & 4th Tue at 1 pm ET 	X		
Daily Reporter <ul style="list-style-type: none"> Daily Logs 2nd & 4th Wed of the month 	X		X
As-Needed LCPtracker Pro Live Training Sessions			X