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Exemption 4

STATEMENT OF PROJECT OBJECTIVES
Algenol Biofuels Inc.
Pilot-Scale Integrated Biorefinery for Producing Ethanol from Hybrid Algae

A. PROJECT OBJECTIVES

Exemption 4

B. PROJECT SCOPE

The DOE Office of Energy Efficiency and Renewable Energy (EERE) has established performance goals. Among these goals are to: 1) dramatically reduce, or even end, dependence on imported oil; and 2) spur the creation of the domestic bio-industry. To that end, the Office of the Biomass Program is offering to fund integrated biorefinery projects under this FOA entitled "Demonstration of Integrated Biorefinery Operations". The FOA lists three main criteria for selection; 1) technical merit and rationale, 2) credible economics and competitive advantages that justify an award, and 3) knowledge and experience in project management.

Algenol and its collaborators, The Dow Chemical Company, National Renewable Energy Laboratory, Membrane Technology & Research Inc., and The Georgia Institute of Technology, have collectively prepared an application that is responsive to the selection criteria as detailed below.

Exemption 4

Exemption 4

C. TASKS TO BE PERFORMED

Exemption 4

Exemption 4

Exemption 4

Exemption 4

STRIPES 'ASSISTANCE AGREEMENT' (COVER PAGE) TEMPLATE LANGUAGE FOR NEW AWARDS AND AWARD MODIFICATIONS

MODIFICATIONS:

Please add the following language to all award modifications in STRIPES at MAIN/TEXT/Header Text

The purposes of this modification are to:

1) Delete and replace the Special Terms and Conditions to reflect the following changes:
   a. Delete and replace Provision 6, "Cost Sharing";
   b. Delete and replace Provision 20, "Funding of Budget Periods";
   c. Delete Provision 27, "Subcontract Approvals"; and
   d. Delete Provision 35, " Reopener Term – Pending Indirect Rates – Financial Assistance ";

2) Delete and replace the Budget Information, SF-424A (Attachment 4);

3) Update the Recipient Business Officer, as shown below; and

4) This modification approves only Budget Period 1 of the Project.

All other terms and conditions remain unchanged.

In Block 7 of the Assistance Agreement, the Period of Performance reflects the beginning of the Project Period through the end of the current Budget Period, shown as 01/29/2010 through 09/30/2010. For multiple Budget Periods, see Special Terms and Conditions, Provision 4, "Award Project Period and Budget Periods."

The total amounts reflected in Blocks 12 and 13 of the Assistance Agreement do not include the Federally Funded Research and Development Center (FFRDC) funding amount of $424,480, which will be funded directly.

DOE Award Administrator: Molly Hames
E-mail: molly.hames@go.doe.gov
Phone: 303-275-4864

DOE Project Officer: Christy Sterner
E-mail: christy.sterner@go.doe.gov
Phone: 303-275-4720

Recipient Business Officer: Katie McFadden
E-mail: Katie.McFadden@Algenolbiofuels.com
Phone: 239-498-2000

Recipient Principal Investigator: Craig Smith
E-mail: craig.smith@algenolbiofuels.com
Phone: 239-498-2000

PMC 128.5
03-26-2010

Please add the following statement to all new awards in STRIPES at MAIN/TEXT/Header Text
Add 'Electronic Signature Defined' statement

Applicant Name: Algenol Biofuels Inc. Award Number: DE-EE0002867.002 Attachment 4

Budget Information - Non Construction Programs

OMB Approval No. 0348-0044

Section A - Budget Summary

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Budget Period 1	81.087			$9,896,607	Exemption 4	
2. Budget Period 2	81.087			TBD		
3.						
4.						
5. Totals		$0	$0	$9,896,607		

Section B - Budget Categories

6. Object Class Categories	Grant Program, Function or Activity				Total (5)
	(1) Budget Period 1	(2) Budget Period 2	(3)	(4)	
a. Personnel	Exemption 4				
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)					
j. Indirect Charges					
k. **Totals** (sum of 6i-6j)					
7. Program Income					$0

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SF-424A (Rev. 4-92)
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PMC 128.1
06-18-2009

U.S. Department of Energy
Project Management Center

FINANCIAL ASSISTANCE AWARD
INDEX and CHECKLIST
(BUYER USE ONLY)

Award #: DE-EE0002867 / 002
Recipient Name: Algenol Biofuels, Inc.
FOA #: DE-FOA-0000096
Specialist: Molly Hames
Contracting Officer: Michael Schledorn
Project Officer: Christy Sterner

Program: The Office of the Biomass Program
Phone: 303-275-4864
Phone: 303-275-4993
Phone: 303-275-4720

tion Item	*Indicate Completion of Action Item by inserting a date in the applicable box below*	
1	Verify Recipient's registration with the Central Contractor Registration (CCR) (http://www.ccr.gov)	CCR Registration Valid through: 04/05/2011
2	Verify Recipient's registration with FedConnect (goto P:\STRIPES\Fedconnect Reports)	Registration Confirmed on: 07/14/2010
3	ASAP Enrollment; if Recipient is not enrolled in ASAP, send .pdf of completed PMC 121.1 to 'GO Finance' mailbox	PMC 121.1 sent to 'GO Finance' on: N/A
4	Vendor Supplier/Site Information Form; send completed PMC 128.8 to 'GO Finance' mailbox (MS 2007)	Vendor Supplier/Site Information Form sent to 'GO Finance' on: N/A

STRIPES Index #	Supporting Document		Form #	applicable	not applicable	Supporting Document Naming Convention	pdf. required
AWD-001	Award Index and Checklist		PMC 128.1	X		**AWD-001 AWDChecklist**	
AWD-002	Selection Statement		n/a		X	**AWD-002 SelStat**	.pdf
AWD-003	Determination of Non-Competitive Financial Assistance (DNFA) Documentation (include Request for Review PMC.112.2)		PMC 109.x		X	**AWD-003 DNFADocs**	batch .pdf
AWD-004	HCA Approval (Total Project Value greater than $25M and less than $50M) (include Request for Review PMC.112.2)		n/a		X	**AWD-004 HCAApvl**	.pdf
AWD-005	HQ Business Clearance Documentation (Total Project Value greater than or equal to $50M)						
	AWD-005a	HQ Business Clearance Worksheet	PMC 107.1		X	**AWD-005 HQBusClrDocs**	batch .pdf
	AWD-005b	HQ Business Clearance Transmittal Letter(s)	PMC 107.4		X		
	AWD-005c	HQ Business Clearance; Correspondence received from HQ	n/a		X		
AWD-006	Congressional Affairs Notification		DOE F 4220.10		X	**AWD-006CongNotification**	.pdf
AWD-007	Successful Application Documentation (Prime) - Algenol Biofuels, Inc.						
	AWD-007a	Application for Federal Assistance	SF-424		X	**AWD-007a AppDocsPrime (Algenol)**	batch .pdf
		SF424A Budget Information	SF-424A	X			
		Budget Justification	PMC 123.1	X			
		Disclosure of Lobbying Activities	SF-LLL		X		
		Cost Share Commitment Ltrs from Third Parties	n/a		X		
	Successful Application Documentation (Sub #1) Georgia Institute of Technology						
	AWD-007b	SF-424A Budget Information	SF-424A		X	**AWD-007b AppDocsSub [GA Tech]**	batch .pdf
		Budget Justification	PMC 123.1		X		
	Successful Application Documentation (Sub #2) Membrane Technology and Research, Inc.						
	AWD-007c	SF-424A Budget Information	SF-424A		X	**AWD-007c AppDocsSub [MTR]**	batch .pdf
		Budget Justification	PMC 123.1		X		
	Successful Application Documentation (Sub #3) The Dow Chemical Company						
	AWD-007d	SF-424A Budget Information	SF-424A	X		**AWD-007d AppDocsSub [Dow]**	batch .pdf
		Budget Justification	PMC 123.1	X			
AWD-008	National Environmental Policy Act (NEPA) Documentation						
	AWD-008a	NEPA Checklist	EF-1		X		

STRIPES Index #	Supporting Document		Form #	applicable	not applicable	Supporting Document Naming Convention	pdf. required
	AWD-008b	NEPA Review	EF-2		X	AWD-008 NEPADocs	batch .pdf
	AWD-008c	NEPA Determination	EF-2a		X		
AWD-009	Pre-Award Information Sheet		PMC 121.1	X		AWD-009 PreAwardInfo	.pdf
AWD-010	Dun&Bradstreet Risk Assessment		PMC 460.2		X	AWD-010 D&BAssessment	.pdf
AWD-011	Combined Technical Evaluation / Negotiation Memorandum		PMC 120.2	X		AWD-011 TechEvalNegMem	.pdf
AWD-012	Intellectual Property Law Division (IPLD) Documentation						
	AWD-012a	IPLD Petition for Advance Waiver of Patent Rights	PMC 133.2		X	AWD-012 IPLDDocs	batch .pdf
	AWD-012b	IPLD Pre-Award Review Request	PMC 133.3		X		
	AWD-012c	IPLD Recommendation	e-mail		X		
	AWD-012d	IPLD Limited Rights Data and Restricted Computer Software	n/a		X		
AWD-013	Cost Share Determination Documentation						
	AWD-013a	Cost Share Determination	PMC 112.2		X	AWD-013a CostShareDet	.pdf
	AWD-013b	Cost Share Waiver	PMC 142.2		X	AWD-013b CostShareWaiver	.pdf
AWD-014	Cost / Price Documentation						
	AWD-014a	Financial Information	PMC 410.1	X		AWD-014 CostPriceDocs	batch .pdf
	AWD-014b	Indirect Rate Agreement or Rate Proposal	n/a	X			
	AWD-014c	Response from C/P Analyst regarding Indirect Rates	PMC 420.3	X			
AWD-015	Excluded Parties List System (EPLS) Query (https://www.epls.gov)		n/a	X		AWD-015 EPLS	
AWD-016	Pre-Award Cost Request and Authorization		n/a		X	AWD-016 PreAwdCostAuth	.pdf
AWD-017	Justification for Use of Conditional Availability of Funds Provision		PMC 132.2		X	AWD-017 JustificationCondAvail	.pdf
AWD-018	Correspondence to Recipients (use this section for correspondence not issued at FOA level)						
	AWD-018a	Correspondence		X		AWD-018a Correspondence	batch .pdf
AWD-019	Internal Review(s)						
	AWD-019a	Request for Review (Review of Award Package)	PMC 112.2	X		AWD-019a RvwAwdPkg	.pdf
	AWD-019b	HCA Approval and Business Clearance	n/a		X	AWD-019b DDRvw	.pdf
AWD-020	Deviations		n/a		X	AWD-020 GuideLtr	.pdf
Cover Page	Assistance Agreement Form		n/a	X			
Body	Special Terms and Conditions		n/a	X			
Attachment 1	Intellectual Property Provisions		n/a				
Attachment 2	Statement of Project Objectives		n/a				
Attachment 3	Federal Assistance Reporting Checklist and Instructions		DOE F 4600.2				
[illegible]chment 4	Budget Information		n/a	X			
[illegible]chment 5	Congintency Appendix		n/a				

PMC 120.1
(2/08)

U.S. DEPARTMENT OF ENERGY
GOLDEN FIELD OFFICE

FINANCIAL ASSISTANCE COMBINED COST/TECHNICAL EVALUATION AND NEGOTIATION MEMORANDUM

SECTION I - GENERAL INFORMATION

This technical evaluation/negotiation memorandum will be prepared jointly by the assigned DOE/Golden OCPM AND OAFA personnel, to document the specific action being evaluated and supported. Each office is responsible for certain sections of this document. The assigned OCPM and OAFA personnel responsible for the action will both sign this document upon its completion, demonstrating their agreement on its contents.

1. Recipient: Algenol Biofuels Inc.

2. Grant/Cooperative Agreement No.: EE0002867 Modification No. 002
   Requisition No: 10EE004395
   Project Title: Recovery Act: Integrated Pilot-Scale Biorefinery for Producing Ethanol from Hybrid Algae

3. Type of Action: ☐ New Award ☐ Renewal ☐ Continuation ☒ Revision

Description of this Action: (NOTE: Indicate what is addressed by this Action only):

The purpose of this action is to revise the Budget Period (BP1) budget and lift the remaining BP1conditions for the Algenol Biofuels project entitled, "Recovery Act: Pilot-Scale Integrated Biorefinery for Producing Ethanol from Hybrid Algae" (DE-EE0002867). The revised BP1 budget ($Exemption 4 has been reduced from the originally approved budget Exemption 4

4. Award type, as determined at Procurement Strategy Meeting (for new awards): ☐ Grant ☒ Cooperative Agreement
   If Cooperative Agreement, provide the specifics of the Substantial Involvement. (Note: This language will be used in the Substantial Involvement provision of the award.):

1. Government Insight

   In order to adequately monitor project progress and provide technical direction and/or redirection to the Recipient, DOE must be provided an adequate level of insight into various Recipient activities. Government Insight activities by DOE include attendance at Recipient meetings, reviews and tests, as well as access for DOE's consultants to perform independent evaluations of Recipient's plans and processes. Recipient shall notify the DOE Project Officer of meetings, reviews, and tests in sufficient time to permit DOE participation, and provide all appropriate documentation for DOE review.

2. Specific activities to be conducted by DOE:

   a. Risk Evaluation – DOE will review the Recipient's initial Risk Mitigation Plan (RMP) for quality and completeness. DOE will also monitor updates to the RMP and actions taken by the Recipient during the performance of its award to mitigate risks and improve the probability of successful execution of the integrated Biorefinery project. At DOE's discretion, additional independent risk analyses of the project by DOE consultants may be requested.

   b. Independent Engineering Assessments – DOE will engage a private, independent engineering (IE) firm to assist in assessing the progress of the project and provide timely and accurate reports to DOE. The

Recipient will ensure that the IE has access to any and all relevant documentation sufficient to allow the IE to provide independent evaluations to DOE on the progress of the project. Such documentation includes but is not limited to the following:

- Drawings and specifications
- Construction and Execution plans
- Resource loaded schedules
- Design functions and requirements for the site final design review
- Risk management plans
- Value management and engineering studies and/or plans
- Acquisition strategies
- Project execution plans
- Project controls including earned value management systems
- Qualifications of the integrated project team.
- Financial strategy for funding the construction project
- Updated marketing and business plan
- Invoices submitted to DOE

DOE will evaluate the quality and completeness of information and documentation provided by the Recipient to DOE and its consultants in order to allow DOE to provide technical direction and/or redirection to the Recipient about how best to achieve the purposes of the award. Consultants to DOE may not provide technical direction and/or redirection to the Recipient.

5. New/Revised Project Period for this Award: From: 01/29/2010 To: 12/31/2014
   New/Revised Budget Period 1 for this Award: From: 01/29/2010 To: 09/30/2010
   New/Revised Budget Period 2 for this Award: From: 10/01/2010 To: 12/31/2014

6. Compliance Assessment (skip if new award):
   a. Deliverables
   The Recipient is current in submitting required reports: ☒ Yes ☐ No
   If no, identify the delinquent report(s), indicate what action(s) have been taken to remedy the situation, and identify what further action(s) are necessary, if any:

   b. Financial
   The Recipient is current in meeting the cost share requirement: ☐ Yes ☐ No
   If no, indicate what action(s) have been taken to remedy the situation and validate why this new action should proceed:
   N/A

7. Check the applicable box for Funding Appropriation: ☒ Energy and Water ☐ Other _____

8. Check the applicable box for Statutory Authority:
   ☒ 109-58, Energy Policy Act 2005
   ☐ 110-140, Energy Independence and Security Act 2007
   ☒ 111-5, Recovery Act (2009)
   ☐ Other: _____

9. Per 10 CFR 600, the preferred payment method for State/Local Governments, Institutions of Higher Education, Hospitals, or Other Non-Profit Organizations is **Advance**. The preferred Payment Method for For-Profit organizations is **Reimbursement**. If the preferred payment method is not planned for a new award, provide an explanation below. Also explain below if the payment method for the award is being changed by this action.
   The recipient is receiving ARRA funds and will continue to be on the ACH payment method to monitor their funds to ensure costs outside of Budget Period 1 are not charged to the award.

10. Is the proposed Recipient on the debarred or suspended list? Yes ☐ No ☒
    Are any of the proposed subrecipients/subcontractors on the debarred or suspended list? Yes ☐ No ☒
    Is the Project Director on the debarred or suspended list? Yes ☐ No ☒
    If yes for either response above, award cannot be made without obtaining a waiver. See attached waiver.
    The review was conducted on the Internet on 07/15/2010 (Include Printout in permanent STRIPES file)
    (Date)

11. A risk determination has been completed on the PMC Form 460.2 Yes ☒ N/A ☐

12. Negotiation:

	Government Negotiator(s)		Recipient Negotiator(s)	
	Name	**Organization**	**Name**	**Position**
1.	Molly Hames	Contract Specialist	Dr. Craig Smith	COO
2.	Christy Sterner	Project Officer	Pat Alm	Assistant Project Manager
3.	Christine English	Navarro Project Engineer	Dax Denman	Assistant Project Manager

SECTION II – NEGOTIATION SUMMARY

1. Please record any significant application or budget submissions that resulted in a revised budget in the Negotiation History Table below (including SF424A, budget justifications, e-mails, etc.):

Application/Budget Submission	Reference Document(s)	Date of Submission	Summary of Change
Original		Jun-09	
Revision #1	123.1; SF424A	1/10/2010	Updated budget to remove some BP2 activities and contigency
Revision #2	123.1;SF424A, SOPO	3/2/2010	Budget and SOPO were adjusted to reflect expedited schedule.
Final	123.1;SF424A	4/21/2010	Dow Chemical revised their budget to remove BP2 activities and Algenol updated some of their cost categories (Note: additional changes were made in July due to proper application of the approved indirect rate.)

2. Complete Budget Table below (only include the original budget and final negotiated costs – the Percent of Total Negotiated Budget will calculate automatically)
Note: List proposed amounts by category even if there are no differences in the dollar amount.

Element of Cost	Original BP1 Negotiated Costs (3/2/10)	Final BP1 Negotiated Costs (7/23/10)	Percent of Total Negotiated Budget	Fringe Benefits and Indirects	
				Proposed Rate	Negotiated Rate
Personnel Fringe Benefits Travel Equipment Supplies Contractual Construction Other Total Direct Charges Indirect Charges	Exemption 4				
TOTAL					
Program Income	0	0	0%		
DOE Share (non-FFRDC)	$10,668,903	$9,896,607	Exemption 4		
DOE Share (FFDRC)	$424,480	$424,480			
Total DOE Share	$11,093,383	$10,321,087			
Non-Federal Cost Share	Exemption 4				

SEE ATTACHED SF 424A FOR BUDGET PERIOD BREAKDOWN

3. Total Allowable Adjustment without Concurrence from the Selection Official per the Selection Statement: 10%
Actual Total Adjustment based on Budget Table Above: 0%
Total Project Costs have not changed from Selection Statement – these are BP1 costs only.
Is the original budget the same as the negotiated budget: ☐ Yes ☒ No
If No, please check all boxes that apply:
☐ Change in the Project Scope
☒ Changes due to Time Delays
☐ Math Errors in Budget
☒ Changes in Indirect/Fringe Costs Caused Changes in Direct Costs or Total Project Costs
☒ Indirect/Fringe Rates incorrectly applied
☐ Other (explain) _____

4. Briefly describe and explain any substantial change(s) to the original Statement of Project Objectives submitted by the recipient:

Project Officer commentary: No changes have been made to the Statement of Project Objectives that was approved in the 001 modification to the award, which lifted all conditions on BP1 except for the work to be completed by the sub-recipient, Dow Chemical. In the original action, the Dow Chemical sub-recipient included costs in BP1 that were not allowed and had to be moved to BP2. In this action, those costs have been moved to BP2. Thus, the scope of work did not change; the associated costs were simply moved to the next phase of the project.

SECTION III – TECHNICAL EVALUATION SUMMARY

A. For each cost category, the Project Officer and the Specialist will complete his/her Technical Evaluation of the Negotiated Costs to confirm that they are all reasonable, allowable, and allocable. Additional comments should be added as necessary and as indicated below.

1. Personnel:

Total Negotiated Personnel Costs: $Exemption 4 Not Applicable, the recipient did not propose personnel costs: ☐

Project Officer:
Original Budget: Exemption 4
Revised budget: $
The labor hours proposed in the negotiated budget are reasonable for the scope of work: ☒

The labor mix proposed in the negotiated budget is reasonable: ☒

The revised budget has changed from the originally approved budget of $Exemption 4 . The changes include a reduction in the number of hours and associated costs with various tasks. More specifically, the changes include the
Exemption 4

Based on comparable positions, experience levels, and rates for technology positions in the industry, the rates are reasonable. While some may seem high, such as the VPs, PI, Mgrs, etc., these positions are for highly experienced personnel and top management within the company; their rates are comparable to higher end rates for these types of positions.

Specialist:
Please fill out the following table with the negotiated costs:

Task	Task Title	Budget Period 1	
		Hours	Budget
Exemption 4			

Negotiated labor rates are reasonable: ☒
These rates were previously deemed reasonable, due to the nature of the activities, the stature of many of the positions within the company, and also the locality. The specialist feels it is reasonable that the recipient felt the number of hours could be reduced in order to meet the objectives of the SOPO for Budget Period 1. For a more detailed personnel cost breakdown, please reference the PMC 123.1 for this modification.

2. Fringe Benefits:

Total Negotiated Fringe Benefit Costs: $Exemption 4 Not Applicable, the recipient did not propose fringe benefit costs: ☐

Original Budget: Exemption 4
Revised Budget: $
Specialist:
Does the Recipient have an approved rate agreement: ☐ Yes ☒ No

If No, select one of the following:
☒ Rate proposal was reviewed by the Cost/Price Analyst and found to be reasonable, allowable, and allocable (attach Cost/Price Analyst Determination)
☐ Rate Proposal was reviewed by the Cost/Price Analyst for a previous award (attach Cost/Price Analyst Determination)
List Date of review_____
☐ Specialist determined that rate was reasonable
☐ Other:

Please fill out the following table with the negotiated costs:

Personnel	Total Cost	Fringe Rate	Cost
Total Personnel	Exemption 4		

The fringe benefit costs in the negotiated budget were appropriately applied and are reasonable: ☒

3. Travel:

Total Negotiated Travel Costs: $Exemption 4 Not Applicable, the recipient did not propose travel costs: ☐

Project Officer:
The travel budget did not change from the originally approved budget.
☒ Specialist concurs.

4. Equipment:

Total Negotiated Equipment Costs: $Exemption 4 Not Applicable, the recipient did not propose equipment costs: ☐

Project Officer:
Original Budget: Exemption 4
Revised Budget: $
The type(s) of equipment proposed in the negotiated budget is/are reasonable for the scope of work: ☒

The cost of equipment proposed in the original budget are reasonable: ☒

Two additional pieces of equipment were budgeted to be purchased during BP1 that were not originally included in the budget for BP1. These include a Exemption 4
Exemption 4 Quotes have been received from the recipient. These pieces of equipment were not included in the original budget but are included in the revised budget because they did not have an engineering department at the time the budget was submitted. When the Director of Engineering was hired, he assessed his department's needs to achieve the project objectives, and identified the need to have Exemption 4
selected has the added advantage of being compatible with their sub-recipient's systems (The Dow Chemical Company).
Exemption 4 which was not contemplated in the original budget.

Is there any proposed equipment with a total cost exceeding $50,000: ☒ Yes ☐ No
☒ Specialist concurs.

5. Supplies:

Total Negotiated Supplies Costs: $0 Not Applicable, the recipient did not propose supplies costs: ☒

Project Officer:
No supply costs were proposed for Budget Period 1.
☒ Specialist concurs.

6. Contractual:

Total Negotiated Contractual Costs: $Exemption 4 Not Applicable, the recipient did not propose contractual costs: ☐

Original Budget: Exemption 4
Revised Budget: $
Project Officer:
The subrecipients proposed in the negotiated budget are appropriate for the scope of work: ☒

The contractual costs proposed in the negotiated budget are reasonable: ☒ Yes

Did the Recipient propose any subrecipients with total costs above $100,000? ☒ Yes ☐ No (If Yes, a separate Technical Evaluation/Negotiation Memorandum is required for each subrecipient/vendor – see below)

The revised budget contains less contractual costs because Dow Chemical moved a portion of their costs from BP1 to Exemption 4

revised budget. Please see the 123.1 for reference

☒ Specialist concurs.

7. Construction:

Total Negotiated Construction Costs: $0 Not Applicable, the recipient did not propose construction costs: ☒

Project Officer:
No construction costs were proposed for Budget Period 1.

☒ Specialist concurs.

8. Other Direct Costs:

Total Negotiated Other Direct Costs: $0 Not Applicable, the recipient did not propose other direct costs: ☒

Project Officer:
No other direct costs were proposed for Budget Period 1.

☒ Specialist concurs.

9. Indirect Charges:

Total Negotiated Indirect Costs: $Exemption 4 Not Applicable, the recipient did not propose indirect costs: ☐

Original Budget: Exemption 4
Revised Budget: $
Specialist:
Does the Recipient have an approved rate agreement: ☐ Yes ☒ No

If No, select one of the following:
☒ Rate proposal was reviewed by the Cost/Price Analyst and found to be reasonable, allowable, and allocable (attach Cost/Price Analyst Determination)
☐ Rate Proposal was reviewed by the Cost/Price Analyst for a previous award (attach Cost/Price Analyst Determination)
List Date of review_____
☐ Specialist determined that rate was reasonable
☐ Other:

Please fill out the following tables with the negotiated costs:

Base Item	Base Cost	Rate	Indirect Cost
Personnel	Exemption 4		
Fringe Benefits			
Travel			
Equipment			
Supplies			
Contractual (Vendor)			
Construction			
Other Direct Costs			
Total:			

The indirect costs proposed in the original budget are reasonable: ☒
Exemption 4

10. Cost Share:

Project Officer:
Project is a: ☒ Research ☒ Development ☐ Demonstration ☐ Other: Pilot Project, BP1 (Explain)

The minimum recipient's cost share required for this award is: Exemption 4
The recipient proposed cost share for this award is: Exemption 4

Does the proposed cost share meet the minimum requirement: ☒ Yes ☐ No

Specialist:
Is the proposed cost share: ☒ Cash ☐ In-kind (detail the amount and category below for in-kind cost share, if applicable)

All proposed cost share is proposed as Exemption 4
from Membrane Technology and Research, Inc.

Organization	Type of Cost Share (Cash or in-kind)	Cost Share Amount	Basis of Value (how the recipient calculated value)
Algenol	Exemption 4		
DOW Chemical Company			
Membrane Technology and Research, Inc.			

Third Party cost share commitment letters have been obtained: ☒ (Please include letters in permanent STRIPES file)
Exemption 4

B. The following Project Officer and Specialist evaluation and negotiation commentary and recommendations address their agreement on all additional considerations for this award.

1. Please list any other special provisions agreed upon for inclusion in this award and describe the rationale for their inclusion below.

The following changes will be made to the Special Terms and Conditions from Modification 001: 1) Delete and replace Provision 6, "Cost Sharing"; 2) Delete and replace Provision 20, "Funding of Budget Periods"; 3) Delete Provision 27, "Subcontract Approvals"; and 4) Delete Provision 35, "Reopener Term – Pending Indirect Rates – Financial Assistance".

2. If a negotiation strategy, or strategies, is/are specified in the selection statement, provide a discussion below of how this was addressed and resolved.

Exemption 4 Total Project Costs must be kept aside from the project budget as contingency for the project. This contingency is applicable to total project costs (BP2 forward) and will be verified by the Project Officer as requested and discussed in the Contingency Appendix that will be attached to the award. Contingency will be reported and tracked as well to address Exemption 4 requirement per the Selection Statement.

3. Any other comments or concerns of the Project Officer and/or Specialist for this award, and the recommended approach to mitigating them, will be explained and addressed below.

All comments and concerns have been previously noted.

4. Is this a Recovery Act award? ☒ Yes ☐ No
   - If Yes, does the Buy American Act apply (see applicability below)? ☐ Yes ☒ No
   - If Yes, does Davis Bacon Act apply (see applicability below)? ☒ Yes ☐ No

   If the answer to either the Buy American Act or Davis Bacon Act questions is Yes, provide a short discussion below on: 1) the type of entity; 2) what applies; Davis Bacon, Buy American, or both; 3) whether it applies to the prime, subrecipient, or both; and 4) work to be performed that requires applicability of Buy American and/or Davis Bacon.

Algenol Biofuels Inc. is subject to the Davis Bacon Act and it will apply to both the Recipient and their subrecipients, throughout the entirety of the project (Budget Periods 1 & 2). This project will include construction activities, and these are subject to the Davis Bacon Act.

Subrecipient: The Dow Chemical Company

SECTION II – NEGOTIATION SUMMARY

1. Please record any significant application or budget submissions that resulted in a revised budget in the Negotiation History Table below (including SF424A, budget justifications, e-mails, etc.):

Application/Budget Submission	Reference Document(s)	Date of Submission	Summary of Change
Original		Jun-09	
Revision #1	123.1.; SF424A	1/10/2010	Updated budget to remove some BP2 activities and contigency
Revision #2	123.1: SF424A	3/11/2010	Provided 123.1
Revision #3	123.1: SF424A	4/21/2010	Revised 123.1
Final		5/28/2010	Additional justification for personnel and use of cost share was provided

2. Complete Budget Table below (only include the original budget and final negotiated costs – the Percent of Total Negotiated Budget will calculate automatically)
Note: List proposed amounts by category even if there are no differences in the dollar amount.

Element of Cost	Original BP1 Budget Submission	Final BP1 Negotiated Costs	Percent of Total Negotiated Budget	Fringe Benefits and Indirects	
				Proposed Rate	Negotiated Rate
Personnel Fringe Benefits Travel Equipment Supplies Contractual Construction Other Total Direct Charges Indirect Charges	Exemption 4				
TOTAL					
Program Income					
DOE Share (non-FFRDC)	$2,150,008	$1,416,520	Exemption 4		
DOE Share (FFDRC)	$0	$0			
Total DOE Share	$2,150,008	$1,416,520			
Non-Federal Cost Share	Exemption 4				

SEE ATTACHED SF 424A FOR BUDGET PERIOD BREAKDOWN

3. Is the original budget the same as the negotiated budget: ☐ Yes ☒ No

If No, please check all boxes that apply:

☐ Change in the Project Scope
☐ Changes due to Time Delays
☐ Math Errors in Budget
☐ Changes in Indirect/Fringe Costs Caused Changes in Direct Costs or Total Project Costs
☐ Indirect/Fringe Rates incorrectly applied
☒ Other (explain): BP2 construction costs were moved to BP2 from the BP1 budget

4. Briefly describe and explain any substantial change(s) to the original Statement of Project Objectives submitted by the recipient:

Project Officer commentary: The scope of work for BP1 proposed by Dow Chemical Company within Algenol's project changed since the original application. Initially, the work that was proposed for BP1 included activities that could only be completed in BP2. These BP2-type activities and the associated costs have been moved out of the budget for BP1 and these costs are evaluated below.

SECTION III – TECHNICAL EVALUATION SUMMARY

A. For each cost category, the Project Officer and the Specialist will complete his/her Technical Evaluation of the Negotiated Costs to confirm that they are all reasonable, allowable, and allocable. Additional comments should be added as necessary and as indicated below.

1. Personnel:

Total Negotiated Personnel Costs: $Exemption 4 Not Applicable, the recipient did not propose personnel costs: ☐

Project Officer:
Dow proposed numerous positions by staff name rather than position. Thev also provided total hours and total compensation. The average rate based on this information calculates Exemption 4This a reasonable rate for the type of work Dow staff will be performing. Additional detail regarding actual positions and compensation rates per position is provided here:

Position Title	# of Employees	Hours	Dollars - Yr 1
Technologist, R&D			
Scientist, R&D	Exemption 4		
Sr. Research Specialist, R&D			
Total:			

The labor hours proposed in the negotiated budget are reasonable for the scope of work: ☒
The labor mix proposed in the negotiated budget is reasonable: ☒

☒ Specialist concurs.

2. Fringe Benefits:

Total Negotiated Fringe Benefit Costs: $0 Not Applicable, the recipient did not propose fringe benefit costs: ☒

Specialist:
No fringe benefit costs were proposed for Budget Period 1.

3. Travel:

Total Negotiated Travel Costs: $0 Not Applicable, the recipient did not propose travel costs: ☒

Project Officer:
No travel costs were proposed for Budget Period 1.

☒ Specialist concurs:

4. Equipment:

Total Negotiated Equipment Costs: $0 Not Applicable, the recipient did not propose equipment costs: ☒

Project Officer: No equipment costs were proposed for Budget Period 1.
☒ Specialist concurs.

5. Supplies:

Total Negotiated Supplies Costs: $0 Not Applicable, the recipient did not propose supplies costs: ☒

Project Officer: No supply costs were proposed for Budget Period 1.
☒ Specialist concurs.

6. Contractual:

Total Negotiated Contractual Costs: $0 Not Applicable, the recipient did not propose contractual costs: ☒

Project Officer: No contractual costs were proposed for Budget Period 1.
☒ Specialist concurs.

7. Construction:

Total Negotiated Construction Costs: $0 Not Applicable, the recipient did not propose construction costs: ☒

Project Officer: No construction costs were proposed for Budget Period 1.
☒ Specialist concurs.

8. Other Direct Costs:

Total Negotiated Other Direct Costs: Not Applicable, the recipient did not propose other direct costs: ☒

Project Officer: *Original Budget:* Exemption 4 *Revised Budget:* $ The revised budget contains less 'other direct costs' because Dow Chemical moved a portion of their costs from BP1 to BP2 because these activities were associated with construction activities. This accounts for the $ Exemption 4 in the budget.
☒ Specialist concurs.

9. Indirect Charges:

Total Negotiated Indirect Costs: $ Exemption 4 Not Applicable, the recipient did not propose indirect costs: ☐

Original Budget: $ Exemption 4
Revised Budget: $
Specialist:
Does the Recipient have an approved rate agreement: ☒ Yes ☐ No

If Yes, List the Date of Rate Agreement: June 23, 2010 Cite Federal Cognizant Agency: Defense Contract Audit Agency

Please fill out the following tables with the negotiated costs:

Base Item	Base Cost	Rate	Indirect Cost
R&D Laboratories	Exemption 4		
Non-R&D Groups			
Administration Service Expense (Total Direct + Overhead)			
Total Indirect:			
Rev			

The indirect costs proposed in the original budget are reasonable: ☒
Dow Chemical was asked to provide an explanation of how they calculated their indirect rates. In the process, they realized they had misapplied their rates. When they recalculated, they found they had proposed under the calculated
Exemption 4

10. Cost Share:

Project Officer:
Project is a: ☒ Research ☒ Development ☐ Demonstration ☐ Other: Pilot Project, BP1 (Explain)
The minimum recipient's cost share required for this award is: Exemption 4

The recipient proposed cost share for this award is: Exemption 4 of their Budget Period 1 costs as cash cost share, totaling $ Exemption 4 The Phase 1 cost share was confirmed to include only Photobioreactor development costs.

Does the proposed cost share meet the minimum requirement: ☒ Yes ☐ No

Specialist:
Is the proposed cost share: ☒ Cash ☐ In-kind

Third Party cost share commitment letters have been obtained: ☒ (Please include letters in permanent STRIPES file)

SECTION IV – RECOMMENDATIONS/APPROVAL

Signatures of the Project Officer and Specialist, indicating their recommendations, as indicated below, will occur after their mutual agreement on the contents of this document, and before the review and approval process for the action. The signatures below indicate that the costs in the negotiated budget are reasonable, allowable, and allocable.

1. Technical Recommendation

The project costs are acceptable and should be considered for a financial assistance award. The resources have been reviewed relative to the Statement of Project Objectives and are found to be reasonable, except as previously noted herein.

Christy Sterner — Signature

8/13/10 — Date

Christy Sterner
Project Officer

2. Specialist Recommendation

In view of the above analysis, the technical evaluation, and considering all known factors, this Award is recommended.

Molly R Hames — Signature

08/16/10 — Date

Molly Hames
Grants and Agreements Specialist

3. Contracting Officer Approval

☒ I concur with the above recommendation and have determined that the Recipient is responsible. I consider this Award to be in the best interest of the Government, and approve the award documents.

☐ In view of the analysis, the technical evaluation, and considering all known factors, I have determined that the Recipient is responsible. This Award is considered to be in the best interest of the Government and approved.

Michael A. Schledom — Signature

08/16/2010 — Date

Michael A. Schledom
Contracting Officer

PMC 420.3
(12/09)

U.S. DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CENTER

REQUEST FOR COST PRICE ASSISTANCE

Award No./DUNS	DE-EE0002867/80-039-9904	Awardee: (Legal Name in CCR)	ALGENOL BIOFUELS INC.
Specialist:	Molly Hames	Project Officer:	Christy Sterner
Requestor:		Project Monitor:	Christine English
Business Contact Name:	Craig Smith	Business Contact Ph. No:	239-498-2000
Business Contact Email:	craig.smith@algenolbiofuels.com	Date of Request:	04/12/2010
Program Area:	Biomass Program	Award Type: ☒ Recovery	☐ CDP ☐ Other_____

Complete Section and Forward to Analyst for Completion

SPECIALIST: Mark below whether pre-award, post award, or audit and provide any comments or special needs:

1) ☒ Pre-award Proposal- submitted documents should include budget documents summary and detail, additional supporting information to support proposed calculations. **Comments:**

There are three sub-recipients for this project: Georgia Institute of Technology ($ REDACTED EXEMPTION 4), Membrane Technology and Research Inc. ($), and the Dow Chemical Company ($). These budgets are included with this request. Georgia Tech already has an existing rate agreement with DHHS, it appears that Membrane TRI had a previous rate agreement in 2004, and it also appears that there was a previous rate agreement with the Dow Chemical Company in 2006 in the W Drive.

COST PRICE ANALYST: **Findings, Recommendations & Comments:**

I have reviewed the proposed indirect costs associated with Award No. DE-EE0002867 to determine if the indirect costs proposed for the Recipient, Algenol Biofuels, Inc., are reasonable, allocable and allowable and in accordance with 10 CFR 600 and FAR 31.205.

DOE Golden is Cognizant for the Recipient and an Indirect Rate Proposal (IRP) was provided in conjunction with this review, based on 2009 YTD actual costs through the Recipient's fiscal yearend December. The IRP appropriately segregated indirect from direct costs and properly excluded unallowable cost elements. This Recipient has had no prior Federal awards and I worked with Craig Jones in January 2010 regarding a few issues from their first submission and development of their IRP. The information provided by the recipient for development of the fringe and indirect rates proposed offers a level of detail to make the following recommendation for Budget Year One (follow-on year's budget estimations are not finalized).

The proposed fringe costs for year one of $ REDACTED EXEMPTION 4 % against the labor base proposed for that year of $ The fringe pool consists of the allowable elements as offered by the Recipient to their employees and represented in the Recipient's information. These elements include payroll taxes, medical, workers compensation, and childcare expense.

Consistent with the IRP provided, the proposed indirect costs for year one of $ re calculated using the IRP rate of % against the base of modified total direct costs $ excluding Contractual expenses, but including Vendor costs. {Reference Excel spreadsheet for specific calculations}. REDACTED EXEMPTION 4

For the Budget Year One information, I recommend accepting the Fringe Rate of % and associated costs of $ as well as the Indirect Rate of % and associated costs of $ These costs are considered reasonable, allocable and allowable and no exception is taken with the application of the proposed rates. I recommend the Contract Specialist confirm the Recipient understands for the follow-on years, the DOE will need to have appropriate incurred cost information prior to adjusting the rates to determine the reasonableness in adjusting these rates. At this point using rates consistent with Year one is reasonable for estimating purposes of deriving the full award fringe and indirect costs proposed. For this review, I was informed there was no audit provided, although an A-133 was conducted according to the Recipient. Therefore, further determination regarding the level of cost risk was not confirmed.

The three Sub-Recipients which have proposed budget under this award (and commented on above) have rate agreements in place with their perspective Cognizant Agency/Office, including DOW Chemical which has listed the most current rate information in their budget justification for 2008 and confirmed with the DCAA office on 4/19/2010. The Contract Specialist will make the determination of the application of the rates for the estimated budgets proposed.

Completed by: Pam Lavergne Date: April 19, 2010

Reviewed by: Lisa Artz Date: 04/19/2010

Department of Energy
Golden Field Office
1617 Cole Boulevard
Golden, Colorado 80401-3393

April 19, 2010

Dear Recipient,

As the Cognizant U.S. Department of Energy (DOE) Office for your organization, we have approved provisional billing rates per the attached Indirect Cost Rate Agreement.

In accordance with applicable Federal regulations (FAR 42.7 and/or 10 CFR 600.103) governing indirect cost rates for your award(s), billing rates are not to be construed as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement of your award(s).

You are expected to monitor the approved billing rates and notify your Administrative Contracting Officer in writing of any substantial change in the indirect rates. Adequate documentation supporting requests for revised billing rates must also be provided.

You are reminded to submit your proposed final indirect cost rates for each fiscal year to the Contracting Officer no later than six (6) months after the end of that fiscal year. The proposed final rates should be based on actual costs incurred and be supported by adequate cost data.

In compliance with the payment clause of your award(s), we are requesting that you make any appropriate invoice adjustments to reflect the approved provisional billing rates for all active DOE, and other Federal agency, awards. Audit adjustments should be clearly delineated so as to be readily identifiable for verification by auditors. Care should be taken that amounts claimed do not exceed cost limitations or indirect cost rate ceilings contained in any awards.

If you have any questions, please contact the Contract Specialist(s) associated with your award(s). If they are unable to address your questions, a representative from the Indirect Cost Rate Management Team will follow up with a response.

Thank you for your consideration,
Indirect Cost Rate Management Team

Enclosure: Provisional Indirect Rate Agreement

Department of Energy
Golden Field Office
1617 Cole Boulevard
Golden, Colorado 80401-3393

PROVISIONAL BILLING / BIDDING RATE AGREEMENT

Awardee: Algenol Biofuels, Inc.

Applicable Period: 2010

The U.S. Department of Energy hereby approves the following provisional rates for billing purposes as requested and confirmed by review dated April 19, 2010. The rates are approved for your **Fiscal Year 2010** beginning January 2010 and ending December 2010 and supersede any prior approvals.

INDIRECT COST RATES:

Indirect Cost Pool	Billing Rate	Allocation Base
Fringe	REDACTED EXEMPTION 4	(a)
Indirect Rate		(b)

BASIS FOR ALLOCATION:

(a) Total Labor Dollars
(b) Modified Total Direct Cost, including vendor costs, excluding subcontractor costs.

Pending establishment of final indirect cost rates, you may bill for indirect expenses using the above rates for the period specified for existing Government contracts, grants, or cooperative agreements. However, this approval shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in such awards. Additionally, if any award contains indirect rate ceilings, and these ceilings are less than the above rates, the lesser rate shall prevail.

Acceptance of these provisional rates for billing purposes does not imply final acceptance nor commit the Government to any specific rate in final rate negotiations.

Nothing herein shall be construed to prejudice, waive, or in any other way affect any rights of the Government under the provisions of any contracts, grants, or other cooperative agreements respecting limitation of the Government's obligation hereunder.

This agreement is effective as of the date of this letter. Questions regarding this agreement should be directed to my attention at the address below.

For the U.S. Department of Energy:

Lisa Artz
Ms. Lisa Artz
Administrative Contracting Officer
Indirect Cost Rate Management
1617 Cole Boulevard
Golden, Colorado 80401-3393

April 20, 2010
Date

EPLS

Excluded Parties List System

Search - Current Exclusions

> Advanced Search
> Multiple Names
> Exact Name and SSN/TIN
> MyEPLS
> Recent Updates
> Browse All Records

View Cause and Treatment Code Descriptions

> Reciprocal Codes
> Procurement Codes
> Nonprocurement Codes

Agency & Acronym Information

> Agency Contacts
> Agency Descriptions
> State/Country Code Descriptions

OFFICIAL GOVERNMENT USE ONLY

> Debar Maintenance
> Administration
> Upload Login

EPLS Search Results

Results 1 - 1 of 1

Search Results for Parties Excluded by

Firm, Entity, or Vessel : Algenol Biofuels, Inc.
Firm, Entity, or Vessel : The Dow Chemical Company
Firm, Entity, or Vessel : Georgia Institute of Technology
Firm, Entity, or Vessel : Membrane Technology and Research, Inc.
Individual : Craig R. Smith
Individual : Katie McFadden

As of 02-Dec-2010 11:26 AM EST

Save to MyEPLS

Page: 1

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Name	Smith, Craig E.
Classification	Individual
Exclusion Type	Reciprocal
Description	Convicted of Clean Air Act or Clean Water Act violation- ineligible for awards to be performed at this Facility Only: C.W.S. Industries, Inc., 726-C Kaighns Ave., Camden, NJ 08103 (Violating Facility)

Address(es) --

Verify Street 1

Verify Street 2

Address Cherry Hill, NJ, 08003
DUNS none

CT Action(s) --

Action Date	24-Feb-2003
Termination Date	Indef.
CT Code	H
Agency	EPA
Agency POC	EPA Contacts
EPLS Create Date	23-Mar-2004
EPLS Modify Date	

Record History

Page: 1

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Back New Search Report Excel XML ASCII Printer-Friendly

Resources

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> Public User's Manual
> FAQ
> Acronyms
> Privacy Act Provisions
> News

Reports

> Advanced Reports
> Recent Updates
> Dashboard

Archive Search - Past Exclusions

> Advanced Archive Search
> Multiple Names
> Recent Updates
> Browse All Records

Contact Information

> For Help: Federal Service Desk

Hames, Molly

From: Crawford, Lalida
Sent: Thursday, December 02, 2010 1:49 PM
To: Hames, Molly
Subject: FW: Status of Algenol Amendment

-----Original Message-----
From: Schledorn, Michael
Sent: Monday, November 29, 2010 2:50 PM
To: Sterner, Christy; Crawford, Lalida
Cc: Buck, Michael
Subject: RE: Status of Algenol Amendment

REDACTED
EXEMPTION 5

- deliberative process

Michael A. Schledorn
Chief, RE Branch II/Contracting Officer Golden Field Office U.S. Department of Energy
303.275.4993
800.644.6735 X4993 (toll free)
303.275.4830 FAX
michael.schledorn@go.doe.gov

--- OFFICIAL USE ONLY ---
May be exempt from public release under the Freedom of Information Act, 5 U.S.C. 552, Exemption 5 - Privileged Information.

-----Original Message-----
From: Sterner, Christy
Sent: Monday, November 29, 2010 2:45 PM
To: Schledorn, Michael; Crawford, Lalida
Cc: Buck, Michael
Subject: RE: Status of Algenol Amendment

Hi Mike,

REDACTED
EXEMPTION 5

- deliberative process

I hope that helps. Please let me know if you have additional questions, would like to talk about the amendment, or if it appears that I have left supporting documentation out that is needed.

Best regards,

Christy Sterner
U.S. DOE

Go to http://www.eere.energy.gov/golden/funding.aspx for important news regarding Grants.gov.

-----Original Message-----
From: Schledorn, Michael
Sent: Monday, November 29, 2010 2:34 PM
To: Sterner, Christy; Crawford, Lalida
Cc: Buck, Michael
Subject: RE: Status of Algenol Amendment

REDACTED
EXEMPTION 5

- deliberative process

Michael A. Schledorn
Chief, RE Branch II/Contracting Officer Golden Field Office U.S. Department of Energy
303.275.4993
800.644.6735 X4993 (toll free)
303.275.4830 FAX
michael.schledorn@go.doe.gov

--- OFFICIAL USE ONLY ---
May be exempt from public release under the Freedom of Information Act, 5 U.S.C. 552, Exemption 5 - Privileged Information.

-----Original Message-----
From: Sterner, Christy
Sent: Monday, November 29, 2010 2:27 PM
To: Crawford, Lalida
Cc: Buck, Michael; Schledorn, Michael
Subject: Status of Algenol Amendment
Importance: High

Hi Lalida,

REDACTED
EXEMPTION 5

- deliberative process

Best regards,

Christy Sterner
Project Officer
U.S. Department of Energy
Golden Field Office
Phone: 303-275-4720
Fax: 303-275-4753
email: christy.sterner@go.doe.gov

Go to http://www.eere.energy.gov/golden/funding.aspx for important news regarding Grants.gov.

IPLD REVIEW FOR FUNDING OPPORTUNITY ANNOUNCEMENTS

Comments: IPLD Review Results e-mails on: [insert date]

Signature: _____

IPLD REVIEW FOR NEW AWARDS & MAJOR MODS

Comments: IPLD Review Results e-mails on: [insert date]

LEGAL REVIEW FOR NEW AWARDS, MAJOR MODS & OTHER ACTIONS

Type of Review:
- ☐ New Award
- ☐ Mod, include short explanation:
- ☐ Novation/Name Change
- ☐ Other Action

Total Project: $
Federal Funds: $

Tailored Provisions Require Review for New Awards:
- ☐ Substantial Involvement Provision for Cooperative Agreements
- ☐ At Risk
- ☐ Conditional Availability of Funds
- ☐ NEPA
- ☐ Subcontractor Approval
- ☐ Specify other:

FOA Number: Title:

☐ Legally Sufficient ☐ Legally Sufficient subject to comments below/attached ☐ Legally Insufficient; Comments below/attached

Comments:

Signature: _____ Date: _____

☐ **FINANCIAL ASSISTANCE DIRECTOR REVIEW** **(Required for award actions greater than $25M)**

☐ Approved ☐ Approved subject to comments below/attached ☐ Not Approved; Comments below/attached

Comments:

Signature: _____ Date: _____

☐ **HEAD OF CONTRACTING ACTIVITY REVIEW** **(Required for award actions greater than $25M)**

☐ Approved ☐ Approved subject to comments below/attached ☐ Not Approved; Comments below/attached

Comments:

Signature: _____ Date: _____

PMC 112.2
(08/27/2009)

U.S. DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CENTER

REQUEST FOR REVIEW

☒ Normal Review ☐ Expedited Review Date: 12/02/2010

Justification for Expedited Review _____

Award Number: DE-EE0002867 FOA Number, if new award: REDACTED EXEMPTION 4

Item(s) For Review: Budget revision; lift subcontractor hold and reopener clause.

Total Project: $
Federal Funds: $ 24,331,431

Specialist Listed on Award: Molly Hames Phone: 303-275-4864

Specialist Who Prepared Award: _____ Phone: _____

Note to Specialist: Send 72 Hour Congressional Notification for FOA action reviews, as required.

☒ PEER REVIEW

Comments:

REDACTED EXEMPTION 5 - deliberative process

Signature:

☐ CONTRACTING OFFICER REVIEW

☐ Approved ☒ Approved subject to comments below/attached ☐ Not Approved; Comments below/attached

Comments: Add additional comments on BPA Cost to technical evaluation

Signature: _____ Date: 12/3/2010

☐ INDEPENDENT REVIEW

Comments:

Signature: _____ Date: _____

☐ LEGAL REVIEWS – SEE PAGE 2 **(Delete page 2 if not required)**

☐ OAFA BRANCH CHIEF REVIEW

☐ Approved ☐ Approved subject to comments below/attached ☐ Not Approved; Comments below/attached

Comments:

Signature: _____ Date: _____

☐ DIRECTOR FINANCIAL ASSISTANCE REVIEW – SEE PAGE 3 **(Delete page 3, if not required)**

☐ HEAD OF CONTRACTING ACTIVITY REVIEW – SEE PAGE 3 **(Delete page 3, if not required)**

PMC 112.2
(08/27/2009)

U.S. DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CENTER

REQUEST FOR REVIEW

☒ Normal Review ☐ Expedited Review Date: 07/15/2010

Justification for Expedited Review _____

Award Number: DE-EE0002867 FOA Number, if new award:

Item(s) For Review: Budget revision; lift subcontractor hold and reopener clause.

Total Project: $ REDACTED EXEMPTION 4
Federal Funds: $ 24,331,431

Specialist Listed on Award: Molly Hames Phone: 303-275-4864

Specialist Who Prepared Award: _____ Phone: _____

Note to Specialist: Send 72 Hour Congressional Notification for FOA action reviews, as required.

☐ PEER REVIEW

Comments:

Signature: _____ Date: _____

☐ CONTRACTING OFFICER REVIEW

☐ Approved ☐ Approved subject to comments below/attached ☐ Not Approved; Comments below/attached

Comments:

Signature: _____ Date: _____

☐ INDEPENDENT REVIEW

Comments:

Signature: _____ Date: _____

☐ LEGAL REVIEWS – SEE PAGE 2 (Delete page 2 if not required)

☐ OAFA BRANCH CHIEF REVIEW

☐ Approved ☐ Approved subject to comments below/attached ☐ Not Approved; Comments below/attached

Comments:

Signature: _____ Date: _____

☐ DIRECTOR FINANCIAL ASSISTANCE REVIEW – SEE PAGE 3 (Delete page 3, if not required)

☐ HEAD OF CONTRACTING ACTIVITY REVIEW – SEE PAGE 3 (Delete page 3, if not required)

4. Briefly describe and explain any substantial change(s) to the original Statement of Project Objectives submitted by the recipient:

5.

Project Officer Commentary: The purpose of this action is to add tasks to BP1 that were previously slated for BP2. The addition of the six tasks does not result in a budget change – no funds need to be added to BP1 to perform the additional tasks. All but one of the additional tasks are continuing efforts from e: REDACTED EXEMPTION 5 Architect/EPC firm, is really extending the original task of finding an finalizing agreements with both. The table below includes a task by task discussion relating the additional task elements to existing BP1 efforts and the rationale for maintaining the existing budget with no changes. - deliberative process

Additional Task Element	Existing Related Task	Rationale for Budget Not Changing
A.12, A.12.1: On-going demo of organism performance at 4500L scale in saltwater, outdoors	A.2.2.3 Preliminary work at 4500L Scale (subtask under A.2.2 – Demonstrate growth in salt water across scales)	Work was included in original scope related to demo at 4500L scale. Availability of resources and associated funding allows the additional task of continuing this work to be pursued in BP1 rather than BP2.
A.13: Initiate architect/EPC firm	A.5 Architect Search and Site Selection, Design and Construction Planning, Employee Recruiting	In the original scope, funds were allotted for finding, reviewing, and selecting an architectural firm and EPC contractor. There are funds remaining in this task that can now be used to put contracts in place with both and begin initial work covered under BP1 and NEPA.
A.14: Compile final design specifications	Related to all unit op tasks: A.3.1.11.2; A.4.1.1.3; A.4.1.2.3; A.4.1.3.3; A.4.1.4.4.2; A.4.1.6.1.4; A.4.1.6.2.3; A.4.1.7.6; A.4.2.1.1.4; A.4.2.1.2.4; A.4.2.1.3.4; A.4.2.1.4.4	All engineering and design tasks included generation of preliminary design specifications. It was originally agreed that final design would occur early in BP2 (as close to 100% as possible within the NEPA regulations). Remaining funds associated with the engineering and design can be used in BP1 to further the design to as close to final as possible (prior to BP2).
A.15: On-going recruitment of Plant Manager, Engineer, and Project Manager	A.5.3 Personnel Recruiting (A.5.3.1; A.5.3.2; A.5.3.3; A.5.3.4)	Recruitment has taken longer than expected and the much of the funds originally allotted for this effort are available to continue the effort.
A.16: Continued flexible film photobioreactor evaluation	A.3: Flexible Film Photobioreactor Development	As with many of the other tasks, this effort was begun under the original scope and budget. There are funds remaining in this effort from the original BP1 budget that can further this effort through the additional task, using existing personnel.
A.17: Program Management BP1	A.9 Program Management of Extended DOE Phase 1 Activities	It makes sense that if there were funds remaining from the original tasks noted above, there would be program management activities and funds available for continuing these efforts.

As noted in the Table above, funds were originally allocated to the 'beginning' or 'preliminary' activities associated with each of these 'continuing' activities. Therefore, the budget in itself has not changed. More of the originally planned activities will be pursued with this extended scope for BP1 than originally planned under the current scope and budget. It

SPECIAL TERMS AND CONDITIONS

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1. RESOLUTION OF CONFLICTING CONDITIONS

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

2. AWARD AGREEMENT TERMS AND CONDITIONS

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

a. Special Terms and Conditions.
b. Attachments:

Attachment Number	Title
1.	Intellectual Property Provisions
2.	Statement of Project Objectives
3.	Federal Assistance Reporting Checklist and Instructions
4.	Budget Pages (SF 424A)
5.	Requirements for Contingency Funds for Integrated Biorefinery Projects

c. Applicable program regulations.
d. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov.
e. Application/proposal as approved by DOE.
f. National Policy Assurances to be incorporated as award terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

3. ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by the Department of Energy, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

4. AWARD PROJECT PERIOD AND BUDGET PERIODS

The Project Period for this award is 01/29/2010 through 12/31/2014, consisting of the following Budget Periods:

Budget Period	Start Date	End Date
1	01/29/2010	09/30/2010
2	10/01/2010	12/31/2014

5. PAYMENT PROCEDURES - REIMBURSEMENT THROUGH THE AUTOMATED CLEARING HOUSE (ACH) VENDER INQUIRY PAYMENT ELECTRONIC REPORTING SYSTEM (VIPERS)

a. Method of Payment. Payment will be made by reimbursement through ACH.

b. Requesting Reimbursement. Requests for reimbursements must be made electronically through Department of Energy's Oak Ridge Financial Service Center (ORFSC) VIPERS. To access and use VIPERS, you must enroll at https://finweb.oro.doe.gov/vipers.htm. Detailed instructions on how to enroll are provided on the web site.

For non-construction awards, you must submit a Standard Form (SF) 270, "Request for Advance or Reimbursement," at https://finweb.oro.doe.gov/vipers.htm and attach a file containing appropriate supporting documentation. The file attachment must show the total Federal share claimed on the SF 270, the non-Federal share claimed for the billing period if cost sharing is required, and cumulative expenditures to date (both Federal and non-Federal) for each of the following categories: salaries/wages and fringe benefits; equipment; travel; participant/training support costs, if any; other direct costs, including subawards/contracts; and indirect costs. For construction awards, you must submit a SF 271, "Outlay Report and Request for Reimbursement for Construction Programs," through VIPERS.

c. Timing of submittals. Submittal of the SF 270 or SF 271 should coincide with your normal billing pattern, but not more frequently than every two weeks. Requests for reimbursement must be limited to the amount of disbursements made during the billing period for the Federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.

d. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

e. Payments. The DOE approving official will approve the invoice as soon as practical, but not later than 30 days after your request is received, unless the billing is improper. Upon receipt of an invoice payment authorization from the DOE approving official, the ORFSC will disburse payment to you. You may check the status of payments at the VIPER web site. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) that you filed.

6. COST SHARING

a. Total Estimated Project Cost is the sum of the Federal Government share, including Federally Funded Research and Development Center (FFRDC) contractor costs, and Recipient share of the estimated project costs. The DOE FFRDC contractor cost is not included in the total approved budget for this award, because DOE will pay the DOE FFRDC contractor portion of the effort under an existing DOE contract. The Recipient is not responsible for reporting on that portion of the total estimated cost that is paid directly to the DOE FFRDC contractor.

The Recipient's cost share must come from non-Federal sources unless otherwise allowed by law. By accepting Federal funds under this award, you agree that you are liable for your percentage share of allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion. This cost is shared as follows:

Budget Period	DOE Cost Share, including FFRDC Costs		Recipient Cost Share	Total Estimated Costs
	DOE $ / %	FFRDC $ / %	$ / %	
1	$9,896,607 /	$424,480 /	REDACTED EXEMPTION 4	
2	TBD	TBD	TBD	TBD
Total Project	TBD	TBD	TBD	TBD

b. If you discover that you may be unable to provide cost sharing of at least the amount identified in paragraph a of this Article, you should immediately provide written notification to the DOE Award Administrator, indicating whether you will continue the project or phase out the project. If you plan to continue the project, the notification must describe how replacement cost sharing will be secured.

c. You must maintain records of all project costs you claim as cost sharing, including in-kind costs, as well as records of costs to be paid by DOE. Such records are subject to audit.

d. Failure to provide the cost share required by this Article may result in the subsequent recovery by DOE of some or all the funds provided under the award.

7. REBUDGETING AND RECOVERY OF INDIRECT COSTS

a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.

b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the Recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

8. FINAL INCURRED COST AUDIT

In accordance with 10 CFR 600, DOE reserves the right to initiate a final incurred cost audit on this award. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

9. STATEMENT OF FEDERAL STEWARDSHIP

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

10. STATEMENT OF SUBSTANTIAL INVOLVEMENT

1. Government Insight

   In order to adequately monitor project progress and provide technical direction and/or redirection to the Recipient, DOE must be provided an adequate level of insight into various Recipient activities. Government Insight activities by DOE include attendance at Recipient meetings, reviews and tests, as well as access for DOE's consultants to perform independent evaluations of Recipient's plans and processes. Recipient shall notify the DOE Project Officer of meetings, reviews, and tests in sufficient time to permit DOE participation, and provide all appropriate documentation for DOE review.

2. Specific activities to be conducted by DOE:

   a. Risk Evaluation – DOE will review the Recipient's initial Risk Mitigation Plan (RMP) for quality and completeness. DOE will also monitor updates to the RMP and actions taken by the Recipient during the performance of its award to mitigate risks and improve the probability of successful execution of the integrated Biorefinery project. At DOE's discretion, additional independent risk analyses of the project by DOE consultants may be requested.

   b. Independent Engineering Assessments – DOE will engage a private, independent engineering (IE) firm to assist in assessing the progress of the project and provide

timely and accurate reports to DOE. The Recipient will ensure that the IE has access to any and all relevant documentation sufficient to allow the IE to provide independent evaluations to DOE on the progress of the project. Such documentation includes but is not limited to the following:

- Drawings and specifications
- Construction and Execution plans
- Resource loaded schedules
- Design functions and requirements for the site final design review
- Risk management plans
- Value management and engineering studies and/or plans
- Acquisition strategies
- Project execution plans
- Project controls including earned value management systems
- Qualifications of the integrated project team.
- Financial strategy for funding the construction project
- Updated marketing and business plan
- Invoices submitted to DOE

DOE will evaluate the quality and completeness of information and documentation provided by the Recipient to DOE and its consultants in order to allow DOE to provide technical direction and/or redirection to the Recipient about how best to achieve the purposes of the award. Consultants to DOE may not provide technical direction and/or redirection to the Recipient.

11. SITE VISITS

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

12. REPORTING REQUIREMENTS

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

13. PUBLICATIONS

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

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

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

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

14. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

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

15. INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

a. The intellectual property provisions applicable to this award are provided as an attachment to this award.

b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator identified and the Patent Counsel designated as the service provider for the DOE office that issued the award.

The Patent Counsel for the Golden Field Office is Julia Moody, who may be reached at julia.moody@go.doe.gov or 303-275-4867.

16. NATIONAL SECURITY: CLASSIFIABLE RESULTS ORIGINATING UNDER AN AWARD

a. This award is intended for unclassified, publicly releasable research. You will not be granted access to classified information. DOE does not expect that the results of the research project will involve classified information. Under certain circumstances, however, a classification review of information originated under the award may be required. The Department may review research work generated under this award at any time to determine if it requires classification.

b. Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to the national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If you originate information during the course of this award that you believe requires classification, you must promptly:

1. Notify the DOE Project Officer and the DOE Award Administrator;

2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P.O. Box A; Germantown, MD 20875-0963, for classification review.

3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 30 days after receipt by the Director, Office of Classification and Information Control

c. If you originate information concerning the production or utilization of special nuclear material (i.e., plutonium, uranium enriched in the isotope 233 or 235, and any other material so determined under section 51 of the Atomic Energy Act) or nuclear energy, you must:

1. Notify the DOE Project Officer and the DOE Award Administrator;

2. Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P. O. Box A; Germantown, MD 20875-0963 for classification review within 180 days of the date the Recipient first discovers or first has reason to believe that the information is useful in such production or utilization; and

3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 90 days after receipt by the Director, Office of Classification and Information Control.

d. If DOE determines any of the information requires classification, you agree that the Government may terminate the award by mutual agreement in accordance with 10 CFR 600.25(d). All material deemed to be classified must be forwarded to DOE, in a manner specified by DOE.

e. If DOE does not respond within the specified time periods, you are under no further obligation to restrict access to the information.

17. CONTINUATION APPLICATION AND FUNDING

a. Continuation Application. A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least 60 days before the end of each budget period, your continuation application must be submitted to the DOE Project Officer and the DOE Award Administrator identified in the Assistance Agreement, to be eligible to receive a continuation award for the next budget period. The continuation application must include the following information:

1. Application for Federal Assistance, SF-424.

2. A continuation report, which must provide a summary of the progress towards meeting the objectives of the award, including any significant findings, conclusions, or developments, a comparison of actual accomplishment with the objectives established for the reporting period (milestones, deliverables, decision point criteria and stage gates), reasons for slippage if goals were not met, an estimate of any unobligated balances remaining at the end of the budget period, and when applicable an explanation of cost overruns or underruns. A description of your plans for the award during the upcoming budget period and any variance from the DOE approved objectives needs to be included in the continuation application package.

3. A detailed budget and supporting justification for the upcoming budget period with the supporting documentation below, including an estimate of DOE funds expected to be remaining at the end of the current budget period:

   a) Budget Information – Non Construction Programs, SF-424A.

   b) Cost Reasonableness Determination, PMC 123.1 (Excel Version).

4. Environmental Checklist, EF1, (This form should be completed on-line at https://www.eere-pmc.energy.gov/).

5. Commitment Letters from Third Parties Contributing to Cost Sharing, if applicable.

6. Statement of Project Objectives (SOPO), if revision is required.

b. Continuation Funding. Continuation funding is contingent on: (1) availability of funds; (2) meeting the objectives, milestones, deliverables, decision point criteria and stage gates of your award and obtaining approval from DOE to continue work on the project (DOE authorizing either Pass or Redirect through a stage-gate review); (3) submittal of required reports; or (4) compliance with the terms and conditions of the award.

18. LOBBYING RESTRICTIONS

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

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

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

20. FUNDING OF BUDGET PERIODS

DOE has obligated $24,331,431 for completion of the project authorized by this agreement; however, only $9,896,607 is available for work performed by the Recipient during Budget Period 1 of the project. For Budget Period 2, the remainder or $14,434,824 will be available contingent upon the submission by the Recipient of a continuation application and written approval of the continuation application by the DOE Contracting Officer.

In the event that the Recipient does not submit a continuation application for subsequent Budget Periods, or DOE disapproves a continuation application for subsequent Budget Periods, the maximum DOE liability to the Recipient is the funds that are available for the current approved Budget Period. In such event, DOE reserves the right to deobligate any remaining funds.

21. PROPERTY

Real property and equipment acquired by the Recipient shall be subject to the rules set forth in 10 CFR 600.130-137, 10 CFR 600.231-233, or 10 CFR 600.320-324, as applicable.

Consistent with the goals and objectives of this project, the Recipient may continue to use Recipient acquired property beyond the Period of Performance, without obligation, during the period of such use, to extinguish DOE's conditional title to such property as described in 10 CFR 600.132-135, 10 CFR 600.231-233, or 600.321-324, subject to the following: (a) the Recipient continues to utilize such property for the objectives of the project as set forth in the

Statement of Project Objectives; (b) DOE retains the right to periodically ask for, and the Recipient agrees to provide, reasonable information concerning the use and condition of the property; and (c) the Recipient follows the property disposition rules set forth in the applicable sections of 10 CFR Part 600, if the property is no longer used by the Recipient for the objectives of the project, and the fair market value of property exceeds $5,000.

Once the per unit fair market value of the property is less than $5,000, pursuant to the applicable sections of 10 CFR Part 600, DOE's residual interest in the property shall be extinguished and the Recipient shall have no further obligation to the DOE with respect to the property.

The regulations as set forth in 10 CFR Part 600 and the requirements of this article shall also apply to property in the possession of any team member, sub-recipient or other entity where such property was acquired in whole or in part with funds provided by DOE under this award or where such property was counted as cost-sharing under the award.

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

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

23. AT RISK FOR FINANCIAL CAPABILITY

You have been determined to be at risk for financial capability based on the Dun & Bradstreet (D&B) Business Information Report (BIR).

Based on this determination the following requirement has been incorporated into this award: Method of payment will be reimbursement through the Automated Clearing House (ACH) Vendor Inquiry Payment Electronic Reporting System (VIPERS).

You may report any change in circumstances that impact DOE's determination of your financial capability. If you feel that your circumstances have changed to this degree, you may request a re-evaluation at any time after 6 months from the initial determination. Please provide a written request and support to the DOE Award Administrator.

DOE will remove this provision by modification to the award if the conditions that prompted it have been corrected, as approved by the Contracting Officer.

24. INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

a. You shall immediately notify the DOE of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or your consent to the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to its inability to pay debts generally as they become due.

b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph (a); (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.

c. Upon the occurrence of any of the four events described in paragraph a. of this provision, DOE reserves the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines that there are significant deficiencies or concerns with your performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change of payment method; or (ii) institute payment controls.

d. Failure of the Recipient to comply with this provision may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

25. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using federal funds, which would have an adverse affect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding the project.

Prohibited actions include Budget Period 2 tasks (this NEPA determination applies to Budget Period 1 only). This NEPA determination does NOT apply to any Budget Period 2 activities. Additional NEPA review is required prior to beginning any Budget Period 2 activities.

This restriction does not preclude you from Budget Period 1 tasks, which include administrative tasks and some research and development activities.

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

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

26. INDEMNITY

The Recipient shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

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

Preamble

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

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

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

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

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

to the Contracting Officer for reconciliation.

Definitions

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

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

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

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

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

C. Prohibition on Use of Funds

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

D. Access to Records

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

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

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

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

Notice of Restriction on Disclosure and Use of Data
The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

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

F. Protecting State and Local Government and Contractor Whistleblowers.

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

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

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

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

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

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

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

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

G. Request for Reimbursement

RESERVED

H. False Claims Act

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

I. Information in Support of Recovery Act Reporting

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

J. Availability of Funds

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

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

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

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

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

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

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

If the Recipient determines at any time that any construction, alteration, or repair activity on a public building or public works will be performed during the course of the project, the Recipient shall notify the Contracting Officer prior to commencing such work and the following provisions shall apply.

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

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

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

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

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

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

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

None

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

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the

cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or

relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

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

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

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

Include other applicable supporting information.

*Include all delivery costs to the construction site.

30. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

None

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

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

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

Include other applicable supporting information.

*Include all delivery costs to the construction site.

31. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

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

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

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

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

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

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

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

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

33. DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (http://cfr.vlex.com/vid/5-2-definitions-19681309) will be performed during the course of the project, the Recipient shall notify the Contracting Officer prior to commencing such work and the following provisions shall apply. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed.

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

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

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

(3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards,

contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

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

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

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

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

(a) Davis Bacon Act

(1) Minimum wages.

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

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

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

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount