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 12/02/2010 (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 Ahlm	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
N/A			The previously approved budget (002) is not changing.

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	BP1 Approved Costs	Percent of Total Negotiated Budget	Fringe Benefits and Indirects	
			Proposed Rate	Negotiated Rate
Exemption 4	Exemption 4			
TOTAL				
Program Income	$0	0%		
DOE Share (non-FFRDC)	$9,896,607	Exemption 4		
DOE Share (FFDRC)	$424,480			
Total DOE Share	$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 - The Budget is not changing from the current approved budget (002).

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: 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 existing BP1 tasks. The 'new' task, Initiate Architect/EPC firm, is really extending the original task of finding an architectural firm and EPC contractor, to initiating and 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.

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

has also taken longer than expected to secure the contract between Algenol and one of its major partners which has allowed some funds associated with their efforts to be utilized during the extension period (003) to complete the 'preliminary' activities as well as these 'continuing' activities. The revised scope, including these on-going efforts, is consistent with acceptable and previously approved BP1 activities. The overall budget associated with the original scope is being extended to cover the on-going efforts within activities previously budgeted and approved.

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.

*****This Section has been intentionally left blank as the budget has not changed from the approved budget in 002*****

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

Project Officer: The proposed personnel costs have not changed from the originally approved budget.
Specialist: Negotiated labor rates are reasonable: ☒

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

Specialist: The proposed fringe benefit costs have not changed from the originally approved budget.

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

Project Officer: The proposed travel costs have not changed 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: The proposed equipment costs have not changed from the originally approved budget.
☒ Specialist concurs.

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

Project Officer: The proposed supplies costs have not changed from the originally approved budget.
☒ Specialist concurs.

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

Project Officer: The proposed contractual costs have not changed from the originally approved budget.
☒ Specialist concurs.

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

Project Officer: The proposed construction costs have not changed from the originally approved budget.
☒ Specialist concurs.

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

Project Officer: The proposed other direct costs have not changed from the originally approved budget.
☒ Specialist concurs.

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

Specialist: The proposed indirect costs have not changed from the originally approved budget.

10. Cost Share:

Project Officer: Project is a: ☒ Research ☒ Development ☐ Demonstration ☐ Other: (Explain) The minimum recipient's cost share required for this award is: Exemption The recipient proposed cost share for this award is: Exemption Does the proposed cost share meet the minimum requirement: ☒ Yes ☐ No
Specialist: Is the proposed cost share: ☒ Cash ☐ In-kind All proposed cost share for Budget period 1 is proposed as cash contributions from Algenol ($Exemption 4), DOW ($Exemption 4), and Membrane Technology and Research, Inc. ($Exemption 4). Third Party cost share commitment letters were obtained previously.

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 revised SOPO will replace the existing SOPO.

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 of 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 the Exemption 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.

The Contracting Officer and the Project Officer have conferred about how this action potentially affects costs associated with BP2. There is an understanding that the actual effect of this action on BP2 costs must be addressed at the time BP2 is pursued, whether the effect is a reduction in overall BP2 costs or full utilization of remaining BP2 funds due to cost increases, more refined costs or some other reason.

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. includes construction activities, and therefore is subject to the Davis Bacon Act (DBA). DBA will apply to both the Recipient and their subrecipients, throughout the entirety of the project (Budget Periods 1 & 2).

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.

Signature _____ 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.

Signature _____ 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.

Signature _____ Date _____

Michael A. Schledorn
Contracting Officer

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:

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)

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 128.3

(12-22--2009)

U.S. DEPARTMENT OF ENERGY
EERE - PROJECT MANAGEMENT CENTER

AWARD DOCUMENTS - REQUEST FOR SCANNING

STRIPES Award No. DE-EE0002867.002

OAFA Specialist: Molly Hames

Navarro Specialist: N/A

Program: Office of the Biomass Program

OAFA SPECIALIST

Mark the box next to each document included in this package for scanning.

Initials:

_____

Date Package submitted to Scanning POC:

_____

AWARD DOCUMENTS TO BE SCANNED:

DOCUMENTS:

- ☒ AWD-001 Financial Assistance Award Index & Checklist
- ☐ AWD-002 Selection Statement
- ☐ AWD-003 Determination of Non-Competitive Financial Assistance (DNFA) Documentation
- ☐ AWD-004 HCA Approval
- ☐ AWD-005 HQ Business Clearance Documentation
- ☐ AWD-006 Congressional Affairs Notification (DOE F 4220.10)
- ☒ AWD-007 Successful Application Documentation (PRIME & SUBS)
- ☐ AWD-008 National Environmental Policy Act (NEPA) Documentation
- ☐ AWD-009 Pre-Award Information Sheet (PMC 121.1)
- ☐ AWD-010 Dun&Bradstreet Risk Assessment (PMC 460.2)
- ☒ AWD-011 Combined Technical Evaluation / Negotiation Memo (PMC 120.2)
- ☐ AWD-012 Intellectual Property Law Division (IPLD) Documentation
- ☐ AWD-013 Cost Share Determination Documentation
- ☐ AWD-014 Cost / Price Documentation
- ☒ AWD-015 EPLS
- ☐ AWD-016 Pre-Award Cost Request and Authorization
- ☐ AWD-017 Justification for Use of Conditional Availability of Funds Provision (PMC 132.2)

LETTERS/OTHER:

- ☒ AWD-018 Misc. Correspondence to Recipients

REVIEWS:

- ☒ AWD-019a Request for Review (PMC 112.2)(Review of Award Package)
- ☐ AWD-019b [insert other as needed]

STRIPES Procurement Assistant

Initials:_____

Date Package returned to OAFA Specialist:

_____

- ☐ all documents indicated above are included in this package

(Note: return package to OAFA Specialist if any of the documents indicated above are not included in this package)

- ☐ all documents indicated above have been scanned to a non-editable .pdf format
- ☐ .pdf files placed in applicable folder on S:\ drive
- ☐ PMC 128.3 and document package returned (with all original documents) OAFA Specialist

STRIPES Procurement Assistant to retain electronic copy of PMC 128.3 for 1 year, then destroy

OAFA SPECIALIST

Action Items:

- ✓ **VERIFY** that all .pdf files for all documents submitted for scanning were placed in applicable folder on S:\ drive
- ✓ **UPLOAD** all .pdf files to STRIPES AWARD as Supporting Documents
- ✓ **PLACE** all hardcopies of AWARD Supporting Documents in a secured shredder bin

OAFA Specialist: I acknowledge that all supporting documents for this award have been reviewed and uploaded to STRIPES. All paper documents contained in this file can be shredded.

_____

ASSISTANCE AGREEMENT

1. Award No.	2. Modification No.	3. Effective Date	4. CFDA No.
DE-EE0002867	005	01/29/2010	81.087

5. Awarded To	6. Sponsoring Office	7. Period of Performance
ALGENOL BIOFUELS INC. Attn: GREGORY SCHLICHT 28100 BONITA GRANDE DR STE 200 BONITA SPRINGS FL 341356220	Golden Field Office U.S. Department of Energy Golden Field Office 1617 Cole Blvd. Golden CO 80401	01/29/2010 through 09/30/2011

8. Type of Agreement	9. Authority	10. Purchase Request or Funding Document No.
☐ Grant ☒ Cooperative Agreement ☐ Other	109-58, Energy Policy Act 2005 111-5, Recovery Act (2009)	11EE003480

11. Remittance Address	12. Total Amount	13. Funds Obligated
ALGENOL BIOFUELS INC. Attn: GREGORY SCHLICHT 28100 BONITA GRANDE DR STE 200 BONITA SPRINGS FL 341356220	Govt. Share: $24,331,431.00 Cost Share $ REDACTED EXEMPTION 4 Total : $	This action: $0.00 Total : $24,331,431.00

14. Principal Investigator	15. Program Manager	16. Administrator
Craig Smith Phone: 239-498-2000	Carol Christine Sterner Phone: 303-275-4720	Golden Field Office U.S. Department of Energy Golden Field Office 1617 Cole Blvd. Golden CO 80401-3393

17. Submit Payment Requests To	18. Paying Office	19. Submit Reports To
OR for Golden U.S. Department of Energy Oak Ridge Financial Service Center P.O. Box 4517 Oak Ridge TN 37831	OR for Golden U.S. Department of Energy Oak Ridge Financial Service Center P.O. Box 4517 Oak Ridge TN 37831	

20. Accounting and Appropriation Data

IBR

21. Research Title and/or Description of Project

RECOVERY ACT: INTEGRATED PILOT - SCALE BIOREFINERY FOR PRODUCING ETHANOL FROM HYBRID ALGAE

For the Recipient		For the United States of America	
22. Signature of Person Authorized to Sign		25. Signature of Grants/Agreements Officer Signature on File	
23. Name and Title	24. Date Signed	26. Name of Officer Jon F. Olsen	27. Date Signed 05/26/2011

NAME OF OFFEROR OR CONTRACTOR
ALGENOL BIOFUELS INC.

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	DUNS Number: 800399904 The purpose of this modification is to move tasks from Budget Period 2 into Budget Period 1. Accordingly the following changes are made: 1) Delete and replace the Terms and Conditions to incorporate the following changes: a. Delete and replace the "Award Project Period and Budget Periods" provision; b. Delete and replace the "Cost Sharing" provision; c. Delete and replace the "Funding of Budget Periods" provision; d. Delete and replace the "National Environmental Policy Act (NEPA) Requirements" provision; e. Add the "Reporting Subawards and Executive Compensation" provision; and f. Add the "Central Contractor Registration and Universal Identifier Requirements" provision; 2) Delete and replace the Statement of Project Objectives (Attachment 2); 3) Delete and replace the Budget Information, SF-424A, (Attachment 4); and 4) Grant a six month No Cost Time Extension to extend the Budget Period 1 end date from 03/31/2011 to 09/30/2011, and to extend the Project Period end date from 12/31/2014 to 06/30/2015. 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 09/30/2011. 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. Continued ...				

NAME OF OFFEROR OR CONTRACTOR
ALGENOL BIOFUELS INC.

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	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 "Electronic signature or signatures as used in this document means a method of signing an electronic message that-- (A) Identifies and authenticates a particular person as the source of the electronic message; (B) Indicates such person's approval of the information contained in the electronic message; and, (C) Submission via FedConnect constitutes electronically signed documents." ASAP: NO Extent Competed: COMPETED Davis-Bacon Act: YES Fund: 05794 Appr Year: 2009 Allottee: 31 Report Entity: 200835 Object Class: 41000 Program: 1004173 Project: 2004000 WFO: 0000000 Local Use: 0000000				

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

A. PROJECT OBJECTIVES

1. Demonstrate the commercial potential of DIRECT TO ETHANOL™ technology by building a pilot-scale DIRECT TO ETHANOL™ integrated biorefinery.

2. Operate a pilot-scale DIRECT TO ETHANOL™ integrated biorefinery that uses approximately 2 tonnes per day of carbon dioxide from industrial emissions as the feedstock for making ethanol.

3. Implement an integrated biorefinery project that will immediately create or save more than 300 well-paying high-tech jobs in Florida.

4. Assess the economic and environmental impact of a new breakthrough energy technology that could eventually create billions of dollars of economic value and thousands of new well-paying jobs while consuming large quantities of carbon dioxide from industrial emissions, displacing petroleum, and moving the U.S. toward energy independence.

5. Assemble a consortium of private industry, federal laboratories, and academic institutions that will contribute to the development, construction, operation and optimization of Algenol's pilot-scale integrated biorefinery and can contribute to future improvements in DIRECT TO ETHANOL™ technology.

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 have collectively prepared a project 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

Exemption 4

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

Previous Edition Usable

SF-424A (Rev. 4-92)
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SPECIAL TERMS AND CONDITIONS

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1. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the 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 06/30/2015, consisting of the following Budget Periods:

Budget Period	Start Date	End Date
1	01/29/2010	09/30/2011
2	10/01/2011	06/30/2015

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	$15,162,555 /	$424,480 /		
2	TBD	TBD	TBD	TBD
Total Project	TBD	TBD	TBD	TBD

REDACTED
EXEMPTION 4

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 $15,162,555 is available for work performed by the Recipient during Budget Period 1 of the project. For Budget Period 2, the remainder or $9,168,876 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

For this award, DOE has made a final NEPA determination for all activities under this award that are listed in the Statement of Project Objectives (SOPO) formally approved by DOE through incorporation into and attached to the award. You (Recipient) may proceed with the activities as described in the SOPO. This NEPA determination is specific to the project as described in the SOPO formally approved by DOE through incorporation into and attached to the award.

Algenol must obtain and comply with all appropriate Federal, state, and local permits required for construction and operation of the biorefinery, and minimize potential impacts through the implementation of best management practices and various applicant-committed measures as detailed in the Final EA which is incorporated by reference in the Financial Assistance Agreement.

If you later add to or modify the activities in the above-referenced SOPO, you must submit the revised SOPO to the DOE Project Officer. Those additions or modifications are subject to review by the NEPA Compliance Officer and approval by the DOE's Contracting Officer. Recipients are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination. Any new activities or modification of activities is subject to additional NEPA review and is not authorized for federal funding until DOE provides a NEPA determination on those additions or modifications. DOE may require the Recipient to submit additional information to support a revised NEPA determination. Should you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA determination, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

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. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to http://www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if

i. The total Federal funding authorized to date under this award is $25,000 or more;

ii. In the preceding fiscal year, you received;

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at http://www.ccr.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if;

i. In the subrecipient's preceding fiscal year, the subrecipient received;

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards and;

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (*e.g.* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

28. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions

For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at http://www.ccr.gov).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian Tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

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

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

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

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in

providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

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

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

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

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

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

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

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

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State

Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the

Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

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

(c) Recipient Responsibilities for Davis Bacon Act

(1) On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:

(i) Obtain, maintain, and monitor all Davis Bacon Act (DBA) certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;

(ii) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;

(iii) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (ii) above;

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

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

(vi) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;

(vii) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and

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

(d) Rates of Wages

The minimum wages to be paid laborers and mechanics under this award involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are found at http://www.wdol.gov/, by clicking on "Selecting DBA WDs". The Wage Determination Number(s) and General Decision Number(s) specific to this award are found below. These wage rates are minimum rates and are not intended to represent the actual wage rates that the Contractor may have to pay.

CONSTRUCTION TYPE	WAGE DETERMINATION NUMBER	GENERAL DECISION NUMBER
Building	TX53; FL121; FL45; MD1	TX080053 01/22/2010 TX53; FL080121 02/12/2010 FL121; FL080045 02/12/2010 FL45; MD080001 02/12/2010 MD1

36. CONTINGENCY

(a) Contingency Requirement. A minimum amount of Contingency is required for awards selected under Funding Opportunity Announcement DE-FOA-0000096. "Contingency" is defined in the Appendix as: "a provision in the Project Management Plan to mitigate cost and/or schedule risk." Contingency funds must be (a) liquid, (b) immediately available, and (c) unrestricted funds dedicated exclusively to the Project for the purpose of mitigating project performance baseline risk. Contingency funds may come from a variety of sources, as approved by the Contracting Officer on a case-by-case basis in accordance with the Appendix to these Terms and Conditions (Attachment 5).

(b) Minimum Amount of Contingency. Initial Contingency funds shall be not less than 25 percent of the Total Project Cost that begins with Budget Period 2, as more specifically described in Section B(2) of the Appendix to these Special Terms and Conditions (Attachment 5).

(c) Contingency Not Counted Toward Cost Share or DOE Reimbursement. Contingency is in addition to the Total Project Cost and cannot count toward cost share or result in reimbursement by DOE above the share approved in the award.

(d) Appendix. All of the terms and conditions set forth in this provision shall be further subject to the requirements and clarifications of Attachment 5.

PMC 128.1
08-2010

U.S. Department of Energy
Project Management Center

FINANCIAL ASSISTANCE AWARD
INDEX and CHECKLIST
(BUYER USE ONLY)

Award #:	DE-EE0002867 / 005	Program:	The Office of the Biomass Program
Recipient Name:	Algenol Biofuels, Inc.		
FOA #:	DE-FOA-0000096		
Specialist:	Molly Hames	Phone:	303-275-4864
Contracting Officer:	Jon Olsen	Phone:	303-275-4825
Project Officer:	Christy Sterner	Phone:	303-275-4720

Action Item	*Indicate Completion of Action Item by inserting a date in the applicable box below*	
1	Verify Recipient's Registration and Delinquent Federal Debt Status with the Central Contractor Registration (CCR) (http://www.ccr.gov)	CCR Registration Valid through: 06/04/2011; file copy under tab AWD-001
2	Verify Recipient's registration with FedConnect (goto P:\STRIPES\Fedconnect Reports)	Registration Confirmed on: 04/28/2011
3	Vendor Supplier/Site Information Form; send completed PMC 128.8a to 'GO ASAP Enrollment' mailbox	Sent on: N/A; file copy under tab AWD-001

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-001a	Vendor Supplier/Site Information Form	PMC 128.8a		X		
	AWD-001b	CCR Registration	n/a	X			
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 107.2		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	
AWD-007	Successful Application Documentation (Prime)						
	AWD-007a	Application for Federal Assistance (Final SF-424 & Project Narrative)	SF-424		X	AWD-007a AppDocs (PRIME)	batch .pdf
		SF-424 (A or R&R) Budget Information	SF-424 (A or R&R)	X			
		Budget Justification	PMC 123.1	X			
		Disclosure of Lobbying Activities	SF-LLL		X		
		Cost Share Commitment Ltrs from Third Parties	n/a		X		
		Vendor Quote and Project Plan	n/a	X			
		Request to move SOPO Tasks into BP1 and extend the BP1 end date	n/a	X			
AWD-008	National Environmental Policy Act (NEPA) Documentation						
	AWD-008a	NEPA Checklist	EF-1		X	AWD-008 NEPADocs	batch .pdf
	AWD-008b	NEPA Review	EF-2		X		
	AWD-008c	NEPA Determination	EF-2a		X		
	AWD-008d	FONSI	FONSI	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

STRIPES Index #	Supporting Document		Form #	applicable	not applicable	Supporting Document Naming Convention	pdf, required
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-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-014d	Audit and Correspondence	n/a	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	
AWD-018	Correspondence to Recipients (use this section for correspondence not issued at FOA level)						
	AWD-018a	Request to move SOPO Tasks into BP1 and extend the BP1 end date	n/a	X		AWD-018a Correspondence	.pdf
AWD-019	Internal Review(s)						
	AWD-019a	Request for Review (Review of Award Package)	PMC 112.2	X		AWD-019a RvwAwdPkg	.pdf
AWD-020	Deviations						
Cover Page	Assistance Agreement Form		n/a	X			
Body	Special Terms and Conditions		n/a		X		
Attachment 1	Intellectual Property Provisions		n/a		X		
Attachment 2	Statement of Project Objectives		n/a	X			
Attachment 3	Federal Assistance Reporting Checklist and Instructions		DOE F 4600.2		X		
Attachment 4	Budget Information		n/a	X			
Attachment 5	Congintency Appendix		n/a		X		

CCR Search Results

Not to be used as certifications and representations. See ORCA for official certification.

Registration Status: Active in CCR; Registration valid until 06/04/2011.
DUNS: 800399904
DUNS PLUS4:
CAGE/NCAGE: 5JLG6
Legal Business Name: ALGENOL BIOFUELS INC.
Doing Business As (DBA):
Division Name:
Division Number:
Company URL: http://www.algenolbiofuels.com/

Physical Street Address 1: 28100 BONITA GRANDE DR STE 200
Physical Street Address 2:
Physical City: BONITA SPRINGS
Physical State: FL
Physical Foreign Province:
Physical Zip/Postal Code: 34135-6220
Physical Country: USA

Mailing Name: ALGENOL BIOFUELS INC.
Mailing Street Address 1: 28100 BONITA GRANDE DR STE 200
Mailing Street Address 2:
Mailing City: BONITA SPRINGS
Mailing State: FL
Mailing Foreign Province:
Mailing Zip/Postal Code: 34135-6220
Mailing Country: USA

Business Start Date: 05/15/2006
Delinquent Federal Debt: No

CORPORATE INFORMATION

Type of Organization

Corporate Entity, Not Federal Tax Exempt
(State of Incorporation is DE)

Business Types/Grants

95 - Research and Development
V2 - Grants
2X - For-Profit Organization

DISASTER RESPONSE INFORMATION

Bonding Levels

Construction Bonding Level, Per Contract (dollars):

Construction Bonding Level, Aggregate (dollars):

Service Bonding Level, Per Contract (dollars):

Service Bonding Level, Aggregate (dollars):

Geographic Areas Served

No geographic areas specified

GOODS / SERVICES

North American Industry Classification System (NAICS)

541711 - Research and Development in Biotechnology

Product Service Codes (PSC)

Federal Supply Classification (FSC)

SMALL BUSINESS TYPES

SDB, 8A and HubZone certifications come from the Small Business Administration and are not editable by CCR vendors.

Business Types Expiration Date

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North American Industry Classification System (NAICS)

The small business size status is derived from the receipts, number of employees, assets, barrels of oil, and/or megawatt hours entered by the vendor during the registration process.

NAICS Code	Description	Small Business	Emerging Small Business
541711	Research and Development in Biotechnology	Yes	No

CCR POINTS OF CONTACT

Government Business Primary POC

Name: PATRICK AHLM

Address Line 1: 28100 BONITA GRANDE DRIVE, SUITE 200

Address Line 2: 28100 BONITA GRANDE DRIVE, SUITE 200

City: BONITA SPRINGS

State: FL

Foreign Province:

Zip/Postal Code: 34135-6220

Country: USA

U.S. Phone: 239-498-2000

Non-U.S. Phone: 239-444-6313

Fax: 239-948-4996

Government Business Alternate POC

Name: PATRICK AHLM

Address Line 1: 28100 BONITA GRANDE DRIVE, SUITE 200

Address Line 2: 28100 BONITA GRANDE DRIVE, SUITE 200

City: BONITA SPRINGS

State: FL

Foreign Province:

Zip/Postal Code: 34135-6220

Country: USA

U.S. Phone: 239-498-2000

Non-U.S. Phone: 239-444-6313

Fax: 239-948-4996

Past Performance Primary POC

Name: PATRICK AHLM
Address Line 1: 28100 BONITA GRANDE DRIVE, SUITE 200
Address Line 2:
City: BONITA SPRINGS
State: FL
Foreign Province:
Zip/Postal Code: 34135-6220
Country: USA
U.S. Phone: 239-498-2000
Non-U.S. Phone:
Fax: 239-948-4996

Past Performance Alternate POC

Name: KATHLEEN MCFADDEN
Address Line 1: 28100 BONITA GRANDE DRIVE, SUITE 200
Address Line 2:
City: BONITA SPRINGS
State: FL
Foreign Province:
Zip/Postal Code: 34135-6220
Country: USA
U.S. Phone: 239-498-2000
Non-U.S. Phone:
Fax: 239-948-4996

Electronic Business Primary POC

Name: PATRICK AHLM
Address Line 1: 28100 BONITA GRANDE DRIVE, SUITE 200
Address Line 2: 28100 BONITA GRANDE DRIVE, SUITE 200
City: BONITA SPRINGS
State: FL
Foreign Province:
Zip/Postal Code: 34135
Country: USA
U.S. Phone: 239-498-2000
Non-U.S. Phone: 239-444-6313
Fax: 239-444-6313

Electronic Business Alternate POC

Name: TONYA DUBOIS
Address Line 1: 28100 BONITA GRANDE DRIVE, SUITE 200
Address Line 2: 28100 BONITA GRANDE DRIVE, SUITE 200
City: BONITA SPRINGS
State: FL
Foreign Province:
Zip/Postal Code: 34135-6220
Country: USA
U.S. Phone: 239-498-2000
Non-U.S. Phone:
Fax:

Applicant Name: Algenol Biofuels Inc. Award Number: DE-EE0002867 Phase I

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. DE-FOA-0000096	81.087			$15,587,035	Exemption 4	
2.						
3.						
4.						
5. Totals				$15,587,035		

Section B - Budget Categories

6. Object Class Categories	Grant Program, Function or Activity				Total (5)
	(1) DE-FOA-0000096	(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				$0

PMC123.1 - Budget Justification for SF 424A Budget

Instructions and Summary

Award Number: DE-EE0002867
Award Recipient: Algenol Biofuels Inc.

Date of Submission: Mar-11
Form submitted by: Algenol Biofuels Inc.
(May be award recipient or sub-recipient)

Please read the instructions on each page before starting.
If you have any questions, please ask your DOE contact. It will save you time!

On this form, provide detailed support for the estimated project costs identified on the SF-424A form (Budget).

- **The dollar amounts on this page must match the amounts on the associated SF-424A.**
- The award recipient and each sub-recipient with estimated costs of $100,000 or more must complete this form and a SF-424A form.
- The total budget presented on this form and on the SF424A must include both Federal (DOE), and Non-Federal (cost share) portions, thereby reflecting TOTAL PROJECT COSTS proposed.
- **For costs in each Object Class Category on the SF-424A, complete the corresponding worksheet on this form (tab at the bottom of the page).**
- **All costs incurred by the preparer's sub-recipients, vendors, contractors, consultants and Federal Research and Development Centers (FFRDCs), should be entered only in section f. Contractual. All other sections are for the costs of the preparer only.**

SUMMARY OF BUDGET CATEGORY COSTS PROPOSED

(Note: The values in this summary table are from entries made in each budget category sheet.)

CATEGORY	Budget Period 1 Costs	Budget Period 2 Costs	Budget Period 3 Costs	Total Costs	Project Costs %	Comments (Add comments as needed)
a. Personnel	Exemption 4					
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
Sub-recipient						
FFRDC						
Vendor						
Total Contractual						
g. Construction						
h. Other Direct Costs						
i. Indirect Charges						
Total Project Costs						

Additional Explanations/Comments (as necessary)

Task #	Title	Position Title	Budget Period 1			Budget Period 2			Budget Period 3			Project Total Hours
			Time (Hours)	Pay Rate ($/Hr)	Total Budget Period 1	Time (Hours)	Pay Rate ($/Hr)	Total Budget Period 2	Time (Hours)	Pay Rate ($/Hr)	Total Budget Period 3	

Exemption 4

Exemption 4

Exemption 4

Exemption 4