Purchasing Department
City Hall, 73 Harlow Street
Bangor, Maine 04401
Tel. 207-992-4282

Request for Qualifications
Architectural & Engineering Services- BIA Facility
Issue Date: November 4, 2016

I. Introduction

The City of Bangor invites qualified consulting firms to submit written Statement of Qualifications (SOQ) to provide architectural and engineering services for the development of design and construction specifications, bid documents, and all other required documentation to prepare a competitive procurement bid package for the completion of a project detailed below.

II. General Information

General information is available on the City's website at the following web address: www.bangormaine.gov/proposals. By submitting a response to this solicitation, the bidder accepts the responsibility for downloading, reading and bidding by the terms and conditions set forth in the City's "General Information for Vendors."

III. Submission

To be considered, return the submission in an envelope **clearly** marked **"RFQ: Architectural and Engineering Services" by 2:00 PM, Wednesday, December 7, 2016** to City of Bangor, Purchasing Department, 73 Harlow Street, Bangor, Maine 04401.

Interested bidders must submit one (1) original hard copy and an electronic version submitted either via email by sending to: bids@bangormaine.gov with reference **"RFQ: Architectural and Engineering Services"** in the subject line or via flash drive. Submissions will be publicly opened on the date and time stated above.

IV. Questions

Any questions must be directed in writing to bids@bangormaine.gov no later than **4:30 PM**, **Monday, November 14, 2016.**

The City will issue a response to any questions or inquiries submitted in writing by the date above, on or before 4:30 PM, **Wednesday, November 16, 2016.** The response will be in the form of an addendum, which will posted to the City's website.

V. EDA Standard Terms & Conditions

Selection will be made in accordance with EDA Standard Terms and Conditions for Construction Projects – February 12, 2016, see attached.

The successful bidder may not provide a competitive bid for architectural and engineering services for the construction of the project identified.

Bidders for a lower tier covered transaction (except procurement contracts for goods and services under $25,000 not requiring the consent of a DOC official) are subject to subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)." In addition, bidders for a lower tier covered transaction for a sub-award, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to 15 CFR part 28, "New Restrictions on Lobbying."

Bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying–Lower Tier Covered Transactions," completed without modification.

All bidders must agree to the following: Lower tier participants must comply with subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)."

Per EDA requirements: Required sub award and contractual provisions:

a. The Recipient shall include a statement in all lower tier covered transactions (sub awards, contracts, and subcontracts) exceeding $100,000 in Federal funds that the sub award, contract, or subcontract is subject to 31 U.S.C. § 1352, as implemented at 15 CFR part 28 ("New Restrictions on Lobbying"). The Recipient shall further require the sub recipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Project Officer within 30 days following the end of the calendar quarter.

b. In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 CFR § 200.326 ("Contract provisions"), all contracts made by the Recipient under this Award must contain the applicable provisions set out in Appendix II to 2 CFR part 200 ("Contract Provisions for Non-Federal Entity Contracts Under Federal Awards"), which address various contractual requirements including remedies, termination for cause and convenience, Equal

Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. See Appendix II to 2 CFR part 200 for a full explanation of these requirements.

Any contract or contracts awarded under the Advertisement for Bids will be funded in part by a grant from the U.S. Department of Commerce - Economic Development Administration (EDA). The total amount of federal funding included in the project financing will be **$1,243,004.00** which represents a portion of the total project costs to include design, construction, project inspection and management of the project. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this advertisement or any resulting contract.

VI. Scope of Work

The Bangor International Airport is interested in completing, under a single contract, a project to support the commercial aircraft refurbishment and painting facility which will be utilized by C&L Aerospace (current tenant), per the EDA grant award. Included in the proposed work is additional warehouse space, construction of a connector building between Dock 10 (hangar) & Dock 12 (hangar), improvements to the existing buildings envelope, (interior & exterior), renovations of existing restrooms, construction of new offices and showrooms, electrical and HVAC upgrades, fire suppression upgrades, install of a new paint booth, hangar floor re-surfacing and overhead door/sliding door improvements.

This project will complete renovations of and additions to existing aircraft hangars at BGR to support the expansion of a large commercial aircraft repair, refurbishment and painting business. The *Authorized Scope of Work* for this project includes:

a. Addition of 5,000 sq ft to an existing maintenance hangar to house a machine shop and equipment;
b. Refurbishment of an additional 25,000 sq ft maintenance hangar to corporate aircraft maintenance standards, including construction of office and showroom space, resurfacing and coating the existing floor, installation of additional insulation and interior paneling, and refurbishment of bathrooms and general hangar area;
c. Construction of an additional 6,000 sq ft building linking two hangars, to establish an aircraft interior facility, to include seat and upholstery shops and a full precision cabinetry shop with high-gloss paint booth; and
d. Refurbishment of the exteriors of four hangars to corporate aircraft business attraction standards and improve energy efficiency, including the installation of new siding and insulation and the refurbishment of all hangar doors.

Projects listed in this section are intended to be a summary only.

VII. Statement of Qualifications Requirements

Submittals must be clear and concise, organized as indicated below, and with all identified sections included. Include only the information requested or directly related to the requested information in each section. If you feel additional information is necessary to support your qualifications, you may include it at the end of the required information in a section called "Supporting Information".

To be considered, submit the following information:

1. Name, address and brief history of firm including location of home office and office(s) from which the work will be accomplished (no more than one page);
2. Resumes of key personnel within the firm who will be assigned to the several specialties required by the project summary. The majority of the firm's staff proposed for work at the Airport must be permanently assigned to a New England office location;
3. Costs for services;
4. Related project or areas of expertise that the firm has performed work or has had experience during the last three (3) years;
    a. Include projects where engineering/architectural services relating to design and construction work were performed;
    b. Include examples of project budgeting, cost estimating and results; and
    c. Include the name of the project, a contact person and a dollar amount for each example.
5. A description of the firm's success in meeting sponsor's Disadvantaged Business Enterprise goals in contracting for consultant services; and
6. Provide any additional comments that may be relevant and useful in the selection process.
7. Meaningful corporate experience within the architectural / engineering field for at least five (5) years;
8. A physical and tangible presence within the New England region for at least five (5) years in the aeronautical field;
9. Lead contractor experience in at least three (3) projects of $1,000,000 or greater in scope.

In addition to the above evidence, competence in report preparation, on-site engineering supervision and project cost control abilities will be factors considered.

Pre-proposal visits of up to three (3) individuals per firm are welcome but not required and will not be considered, directly or indirectly, in the proposal review process. Those seeking a visit are to contact Luc Dionne at 207-992-4640.

VIII. Selection Criteria

A selection committee will review the qualifications and shall select, in order of preference based on the criteria established, a short list of Proposers deemed to be the most qualified to provide the services required.

The Selection Committee will consist of a minimum of three (3) to a maximum of seven (7) officials of Bangor International Airport, City of Bangor and C&L Aerospace representatives. Selection criteria includes:

1. Capability to perform all or most aspects of the project, such as planning, environmental evaluations, financial analysis, architectural design, mechanical, electrical and civil engineering;
2. Recent experience in airport projects comparable to the proposed projects;
3. Reputation for personal and professional integrity and competence;
4. Key personnel's professional background and caliber;
5. Current workload;
6. Costs for services;
7. Demonstrated ability to meet schedules or deadlines;
8. Capability to complete projects without having major cost escalations or overruns;
9. Quality of projects previously undertaken;
10. Familiarity with and proximity to Bangor International Airport;
11. Capability of the branch office to perform the work independently of the home office, or conversely, its capability to obtain necessary support from the home office;
12. Demonstrated understanding of a project's potential problems and the sponsor's special concerns; and
13. Previous successes in meeting sponsor Disadvantaged Business Enterprise goals.

The City of Bangor reserves the right to reject any and all offers received and to waive any informality, technical defect, or clerical error in any proposal as the interest of the City may require. Non-acceptance of any offer will be devoid of any criticism of the offer and of any implication that the offer is deficient in any manner. Rejection of any offer shall be construed as meaning simply that another offer is deemed to be more advantageous to the City for the particular services proposed.

All costs incurred in the preparation and submission of letters of interest and statements of qualifications will be borne by the Proposer.

IX. Evaluation of Qualifications

An evaluation/selection committee shall select, in order of preference and based on the criteria established, a short list of teams deemed to be the most qualified to provide the services required. The selection of the short list will be based on demonstrated competence and qualifications. After the short list is selected, interviews of the top selected firms may be conducted. After selection, the City anticipates executing separate contract (s) with individual firm(s) comprising the team for their respective required services. Any contract(s) awarded under this selection shall include negotiations of compensation and other contract terms and conditions the City determines to be fair and reasonable. In making this determination, the City shall take into account the scope, complexity, and nature of the required services. The evaluation committee's recommendation is subject to the ratification by the EDA and City Council.

X. Security and Identification Badge Requirements

For any contractor and his/her subcontractors engaged in work within the Airport's security fence, the following procedures and rates shall apply.

ALL personnel within the secured area shall have an Airport issued identification badge clearly displayed at all times as outlined below.

1. Background History, Verification & Declaration:

   A. A minimum ten (10) year fingerprint based criminal history check, as well as a security threat assessment will be performed for each individual seeking regular, unescorted access into the secured area(s). This check will be performed by the Airport's Security and Compliance Office.

2. Photo Identification Badge:

   A. The primary contractor will be responsible for delegating one (1) primary and one (1) alternate representative for the company who will act as the signatories/security contacts for the overall project. These representatives will be required to have sida identification badges and will be the only persons authorized to approve badges and clearance for any contractor who may need access to the secure area(s). Scheduled training for these representatives must occur before badges are issued.

   B. Laminated Airport photo identification badges along with the appropriate clearance insignias affixed to them are required to be worn visibly on the outermost garment above the waist at all times while the contractor's employees are within the secured area(s).

   C. The primary and alternate representatives are required to attend a SIDA (Secure Identification Display Area) Class (approx. 1 hour) which explains the FAA/TSA responsibilities and requirements when receiving a photo identification badge. If they are required to drive within the secured area(s), they must also attend a Ground Vehicle Operations

Class (Approx. 2 hours). The fingerprinting and badge issuing process takes up to a couple of weeks.

D. The fee for each photo identification badge is $125.00. Badges are **not** transferable. All badges must be returned to the Airport's Security and Compliance Office upon completion of the project and before final payment is made. An additional fee of $200.00 per badge will be charged for each badge not returned.

If direct payment for unreturned badges is not received, the money will be deducted from the project's final payment. An additional fee of $200.00 will apply for any lost badge.

3. Temporary Badges:

A. Temporary badges are required for all personnel employed by the contractor (other than the primary or alternate representative) while working within the secured area(s) The primary or alternate representative must provide a list of such employees to the Airport's Security and Compliance Office, who will then issue laminated temporary badges to such employees.

B. Laminated Airport temporary badges are required to be worn visibly on the outermost garment above the waist at all times while contractor's employees are within the Airport's secured area(s).

C. The fee for each temporary badge is $75.00. All badges must be returned to the Airport's Security and Compliance Office upon completion of the project and before final payment is made. An additional fee of $200.00 per badge will be charged for each badge not returned.

If direct payment for unreturned badges is not received, the money will be deducted from the project's final payment. An additional fee of $200.00 will apply for any lost badge.

4. Vehicles:

A. Each vehicle that needs access to the Airport's secured area(s) shall be on file with the Airport's Security and Compliance Office. The General Contractor must provide a list of each vehicle to include the year, make, model, color, license number (registration) and VIN/serial number. A $1,000,000 insurance policy is required to be on file with the City of Bangor as a certificate holder.

B. Each vehicle must be appropriately marked with the Company's name, clearly legible on the body of the unit.

NOTE: In some cases, a ramp decal may be required to be affixed to the right rear bumper of the vehicle to ensure that it has been properly registered for airport usage.

C. Any irregular delivery vehicles engaged in deliveries of materials, supplies, etc., must be escorted while entering and at all times while they are within the Airport's secured area(s) be under the authority of a cleared and badged individual.

These policies and procedures are presented as a guideline and are mandated in whole or in part by the TSA, FAA, U.S. Federal Inspection Agencies, and/or the Airport's Operating Safety/Security Criteria. Substantial fines may be imposed if violations occur.

Credentials for either individuals or vehicles may be revoked without notice for violations of these policies and procedures. Any fines imposed upon the Airport by any enforcement agency for violations committed by a contractor or his/her employees or representatives will be levied against the contractor.

Unauthorized use of or misrepresentation in the application for credentials of individuals or vehicles will be cause for immediate denial or withdrawal of any credentials.

All clearance checks and entry formalities must be completed before any work commences on the project. (Approximately two (2) weeks to complete).

Back

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS

Title II of the Public Works and
Economic Development Act of 1965
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components

February 12, 2016

TABLE OF CONTENTS

Contents

PREFACE 6

A. GENERAL REQUIREMENTS AND RESPONSIBILITIES. 7

1. Purpose. 7
2. Authority and Policies. 7
3. Definitions. 8
4. Grant Recipient as Trustee. 9
5. Reaffirmation of Application and Award Acceptance. 9
6. Noncompliance with Award Provisions. 10

B. FINANCIAL REQUIREMENTS. 10

1. Financial Reports. 10
2. Disbursements. 11
3. Federal and Non-Federal Cost Sharing. 12
4. Budget Revisions and Transfers of Funds Among Budget Categories. 12
5. Indirect Costs and Facilities and Administrative Costs. 13
6. Incurring Costs Prior to Award. 15
7. Incurring Costs or Obligating Federal Funds Beyond the Project Expiration Date. 15
8. Time Extensions. 16
9. Tax Refunds. 16
10. Program Income. 16

C. PROGRAMMATIC REQUIREMENTS. 17

1. Project Progress and Performance Reporting. 17
2. Reporting on Real Property. 18
3. Interim Reporting of Significant Project Developments. 18
4. Government Performance and Results Act Reporting. 18
5. Unsatisfactory Performance. 18
6. Programmatic Changes. 18
7. Other Federal Awards with Similar Programmatic Activities. 19
8. Beneficiary Compliance. 19
9. Prohibition Against Assignment by the Recipient. 19
10. Disclaimer Provisions; Hold Harmless Requirement. 19

11. Prohibition on Use of Third Parties to Secure Award. 20
12. Payment of Attorneys' or Consultants' Fees. 20
13. Recipient's Duty to Refrain from Employing Certain Government Employees. 20
14. Commencement of Construction and Project Sign. 21
15. Efficient Administration of Project. 21
16. Conflicts-of-Interest Rules. 22
17. Record-Keeping Requirements. 22
18. Termination Actions. 24
19. Project Closeout Procedures. 25
20. Freedom of Information Act. 26
D. ADDITIONAL REQUIREMENTS RELATING TO CONSTRUCTION PROJECTS. 26
1. The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141–3144, 3146, 3147; 42 U.S.C. § 3212), ... 26
2. The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708) 27
3. The National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 *et seq.*), and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800) 27
4. The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 *et seq.*) 27
5. The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*) 27
6. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*) 27
7. The Energy Conservation and Production Act (42 U.S.C. § 6834 *et seq.*) 27
8. Compliance with Local Construction Requirements 27
E. NONDISCRIMINATION REQUIREMENTS 27
1. Statutory Provisions 27
2. Other Provisions 28
3. Title VII Exemption for Religious Organizations. 29
F. AUDITS. 29
1. Organization-Wide, Program-Specific, and Project Audits. 29
2. Requirement to Submit a Copy of the Audit to EDA. 31
3. Audit Resolution Process. 31
G. DEBTS. 32
1. Payment of Debts Owed the Federal Government. 32
2. Late Payment Charges. 32
3. Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees. 33
4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs. 33

H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT). 33
I. DRUG-FREE WORKPLACE. 33
J. LOBBYING RESTRICTIONS. 33
K. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS. 34
1. Code of Conduct for Recipients. 34
2. Applicability of Award Provisions to Subrecipients. 35
3. Competition and Codes of Conduct for Subawards. 36
4. Applicability of Provisions to Subawards, Contracts, and Subcontracts. 37
5. Pilot Program for Enhancement of Employee Whistleblower Protections. 38
6. Small Businesses, Minority Business Enterprises, and Women's Business Enterprises. 38
7. Subaward to or Contract with a Federal Agency. 39
8. EDA Contracting Provisions for Construction Projects. 39
L. PROPERTY. 39
1. Standards. 39
2. Title. 39
3. EDA's Interest in Award Property. 40
4. Insurance and Bonding. 42
5. Leasing Restrictions. 42
6. Eminent Domain. 43
7. Disposal of Real Property. 43
M. FEDERAL ENVIRONMENTAL REQUIREMENTS. 43
1. The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq*.). 44
2. National Historic Preservation Act (54 U.S.C. § 300101 *et seq*.). 44
3. Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371–4375). 44
4. Clean Air Act (42 U.S.C. § 7401 *et seq.)*, Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.)* (Clean Water Act), and Executive Order 11738 ("Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans"). 44
5. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f *et seq*.). 45
6. Executive Order 11988 ("Floodplain Management") and Executive Order 11990 ("Protection of Wetlands"). 45
7. The Flood Disaster Protection Act (42 U.S.C. § 4002 *et seq*.), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration ("FEMA") or by EDA. 45
8. The Coastal Zone Management Act (16 U.S.C. § 1451 *et seq*.). 45
9. The Coastal Barrier Resources Act (16 U.S.C. § 3501 *et seq*.). 45
10. The Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq*.). 45

11. The Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq*.) 45
12. The Endangered Species Act (16 U.S.C. § 1531 *et seq*.) 45
13. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, more commonly known as Superfund) (42 U.S.C. § 9601 *et seq*.), and the Community Environmental Response Facilitation Act (Pub. L. No. 102-426, 42 U.S.C. §§ 9601 note *et seq.* and 9620(h)(4).) 46
14. The Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.) 46
15. Executive Order 12898 ("Environmental Justice in Minority Populations and Low-Income Populations") 46
16. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4821 *et seq*.) 46
17. The Farmland Protection Policy Act (7 U.S.C. §§ 4201–4209) 46
18. The Noise Control Act of 1972 (42 U.S.C. § 4901 *et seq*.) 46
19. The Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 *et seq*.) 46

N. NOTICE AND EVIDENCE OF COMPLIANCE WITH ALL APPLICABLE ENVIRONMENTAL REQUIREMENTS 46

O. MISCELLANEOUS REQUIREMENTS 47

1. Criminal and Prohibited Activities 47
2. Foreign Travel 47
3. American-Made Equipment and Products 48
4. Intellectual Property Rights 48
5. Increasing Seat Belt Use in the United States 50
6. Research Involving Human Subjects 50
7. Federal Employee Expenses 51
8. Minority Serving Institutions Initiative 51
9. Research Misconduct 51
10. Publications, Videos, and Acknowledgment of Sponsorship 52
11. Care and Use of Live Vertebrate Animals 52
12. Homeland Security Presidential Directive 12 52
13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations 53
14. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as Amended, and the Implementing Regulations at 2 CFR part 175 54
15. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 U.S.C. § 6101 Note), as Amended by the Government Funding Transparency Act of 2008 (Pub. L. No. 110-252) 56
16. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown 61

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS

Title II of the Public Works and
Economic Development Act of 1965
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components

PREFACE

This document sets out the Standard Terms and Conditions for Construction Projects (hereinafter referred to as the "Construction Standard Terms and Conditions" or "Construction ST&Cs") applicable to Economic Development Administration ("EDA") financial assistance awards. A Recipient of an EDA construction financial assistance award must, in addition to the assurances made as part of the Application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the Project to comply with all applicable statutes, regulations, executive orders, Office of Management and Budget ("OMB") circulars, provisions of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 CFR part 200) ("Uniform Guidance"), provisions of these Construction ST&Cs, the EDA-approved Project budget and scope of work, any other incorporated terms and conditions, and approved Applications (collectively, "Terms and Conditions of the Award").

This Award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this Award will be resolved according to the following order of precedence: public laws, regulations (including applicable notices published in the *Federal Register (Fed. Reg.*)), executive orders, OMB circulars, EDA's Construction ST&Cs, and special award conditions. A special award condition may amend or take precedence on a case-by-case basis over a Construction ST&C when warranted by specific Project circumstances.

Some of these Construction ST&Cs contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or the Code of Federal Regulations ("CFR"), executive orders, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, executive order, OMB circular, or assurance.

ECONOMIC DEVELOPMENT ADMINISTRATION
STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS

Public Works and Economic Development Facilities and
Economic Adjustment Assistance Construction Components

A. GENERAL REQUIREMENTS AND RESPONSIBILITIES.

1. Purpose.

The Economic Development Administration's ("EDA's") grants for (i) public works (42 U.S.C. § 3141) and (ii) construction economic adjustment assistance (42 U.S.C. § 3149) Projects awarded under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq*.) ("PWEDA") are designed to enhance regional competitiveness and promote long-term economic development in regions experiencing substantial economic distress. EDA provides construction, design, and engineering grants to assist distressed communities and regions revitalize, expand, and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investment. The requirements set forth in these Construction ST&Cs are applicable to construction, design, and engineering Projects funded in whole or in part by EDA. Any necessary modifications of these requirements will be addressed in special award conditions to accommodate individual Projects. In addition, these Construction ST&Cs apply to construction projects of revolving loan funds ("RLFs") awarded between January 1, 1975 and February 10, 1999 under EDA's Title IX Economic Adjustment Assistance Program, as well as to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).

2. Authority and Policies.

EDA is a bureau within the U.S. Department of Commerce ("DOC" or "Department") established under PWEDA. *See* 13 CFR § 300.1 ("Overview of eligibility requirements"). As a Federal agency, EDA is obligated to promulgate regulations and establish policies and procedures to:

a. Ensure compliance with applicable Federal requirements;

b. Safeguard the public's interest in the grant assets; and

c. Promote the effective use of grant funds in accomplishing the purposes for which they were awarded.

The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to this Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering this Award in a manner that is mutually beneficial to EDA and to the non-Federal entity. The implementation of any such regulatory, administrative, or programmatic change in administering this Award requires EDA's prior written approval.

EDA's policy is to administer all awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA will consider

requests for variances to the procedures set out in these Construction ST&Cs if they do not conflict with applicable Federal statutory and regulatory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.

3. Definitions.

Whenever used in these Construction ST&Cs, the following words and phrases shall have the following meanings:

a. "Application" means all forms, documentation, and any information submitted to the Government as part and in furtherance of a request for an Award and includes submissions made in response to information requested by the Government after submission of the initial Application;

b. "Assistant Secretary" refers to the Assistant Secretary of Commerce for Economic Development;

c. "Award" refers to the Federal financial assistance that a Recipient receives directly from EDA (*see also* 2 CFR § 200.38);

d. "Closeout" or "Project Closeout" refers to the process by which the Grants Officer determines that all applicable administrative actions and all required work under the Award have been completed by the Recipient and EDA (*see also* 2 CFR § 200.16);

e. "Contract" means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the Project or program under this Award. As defined at 2 CFR § 200.22, the term does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (*see also* 2 CFR § 200.22);

f. "Contractor" means an entity that receives a contract as defined in this section and at 2 CFR § 200.22 (*see also* 2 CFR § 200.23);

g. "Department" or "DOC" refers to the U.S. Department of Commerce;

h. "Government" or "Federal Government" refers to EDA;

i. "Grants Officer" refers to the official responsible for all business management and administrative aspects of this Award and, under these Construction ST&Cs, is the Regional Director in the appropriate Regional Office;

j. "Non-Federal entity" is a State, local government, Indian tribe, institution of higher education ("IHE"), or nonprofit organization that carries out a Federal award as a recipient or subrecipient (*see also* 2 CFR § 200.69);

k. "Pass-through entity" is a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (*see also* 2 CFR § 200.74);

l. "Project" refers to the activity for which the EDA grant was awarded;

m. "Project Officer" refers to the EDA official responsible for technical or other programmatic aspects of the Award. During the post-approval stage of the Award, EDA generally assigns this role to an EDA Engineer/Construction Manager;

n. "Recipient" is a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term "Recipient" does not include subrecipients (*see also* 2 CFR § 200.86);

o. "Regional Office" refers to an EDA Regional Office;

p. "Subaward" means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity (*see* also 2 CFR § 200.92);

q. "Subrecipient" is a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency (*see also* 2 CFR § 200.92); and

r. "Terms and Conditions of the Award" is defined in the first paragraph of the Preface above.

Capitalized terms used but not otherwise defined in these Construction ST&Cs have the meanings ascribed to them in EDA's regulations at 13 CFR §§ 300.3 ("Definitions"), 302.20 ("Civil rights"), 307.8 ("Definitions"), and 314.1 ("Definitions").

4. Grant Recipient as Trustee.

The Recipient holds grant funds and any EDA-assisted Project property in trust for the purposes for which the Award was made. The Recipient's obligation to the Federal Government continues for the estimated useful life of the Project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the "Federal Interest") in property acquired or improved, in whole or in part, with the EDA investment. *See* 13 CFR § 314.2 ("Federal Interest").

If EDA determines that the Recipient fails or has failed to meet this obligation, the Government may exercise any rights or remedies with respect to its Federal Interest in the Project. However, EDA's forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

The Recipient agrees to provide EDA with information and documentation necessary for EDA to conduct due diligence to ensure the financial integrity and responsibility of the Recipient and key individuals associated with the Recipient in the management or administration of this Award.

5. Reaffirmation of Application and Award Acceptance.

The Recipient acknowledges that the Recipient's Application for this Award may have been submitted to the Government and signed by the Recipient, or by an authorized representative of the Recipient, electronically without providing an original "wet" signature. In addition, the Recipient, or an authorized representative of the Recipient, may have accepted the Award electronically, which includes drawing down any funds at any time under this Award. Regardless of who submitted the Application to the Government or the means by which the Recipient submitted the Application or accepted the Award, the Recipient hereby reaffirms and states that:

a. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;

b. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and

c. The Recipient has read, understood, and will comply with all terms of this Award, including the assurances and certifications submitted with, or attached to, the Application.

The Recipient agrees to immediately notify the Grants Officer of any material changes to the Application within 30 calendar days of the date the Recipient becomes aware of such changes.

6. Noncompliance with Award Provisions.

Failure to comply with the provisions of this Award may be grounds for appropriate enforcement action pursuant to 2 CFR § 200.338 ("Remedies for noncompliance"), including but not limited to:

a. The imposition of additional Award conditions in accordance with 2 CFR § 200.207 ("Specific conditions");

b. Temporarily withholding Award payments pending the correction of the deficiency;

c. The disallowance of Award costs and the establishment of an account receivable;

d. Wholly or partially suspending or terminating this Award;

e. Initiating suspension or debarment proceedings in accordance with 2 CFR parts 180 ("OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)") and 1326 ("Nonprocurement Debarment and Suspension");

f. Withholding further Federal awards for the Project or program; and

g. Such other remedies as may be legally available. *See also* 2 CFR §§ 200.339 ("Termination") through 200.342 ("Effects of suspension and termination").

In addition, failure to comply with the provisions of this Award may adversely impact the availability of funding under other active EDA or Federal awards and may also have a negative impact on the Recipient's eligibility for future EDA or other Federal awards.

B. FINANCIAL REQUIREMENTS.

1. Financial Reports.

a. During the period of performance, the Recipient shall submit financial reports as follows or as otherwise specified in the special award conditions.

i. *Reports on Award Reimbursements*. In accordance with 2 CFR § 200.327 ("Financial reporting"), the Recipient shall submit a "Federal Financial Report" (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 calendar days following the end of each reporting period, and instructions for completing and submitting Form SF-425 will be discussed during the Project kick-off meeting. Recipients may contact their EDA Project Officer with questions on how to complete or submit the report, if necessary, but they are required to submit reports on time and are encouraged to pose such questions sufficiently

before the deadline to allow for complete, accurate, and timely submission of required reports.

ii. *Reports on Award Advances*. While EDA generally does not advance funds, when the agency does so, the Recipient must submit Form SF-425 within 15 business days following the end of each quarter for an award under $1 million, 15 business days following the end of each month for an award totaling $1 million or more, or as otherwise specified in a special award condition.

b. The Recipient must submit a final financial report using Form SF-425 within 90 calendar days of the expiration date of the Award.

c. Noncompliance with the financial reporting requirements will result in appropriate enforcement action under this Award, including but not limited to suspension of Award payments or disallowance of costs.

d. Financial reports should be submitted to the Project Officer in electronic format, unless otherwise specified in the special award conditions.

2. Disbursements.

a. *Method of Payment.* The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a special award condition, the method of payment under this Award will be reimbursement. Payments will be made through electronic funds transfers directly to the Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3720B *et seq.*). The Award number shall be included on all payment-related correspondence, information, and forms.

i. *State Recipients*. Consistent with 2 CFR § 200.305(a) ("Payment"), for States, payments are governed by Treasury-State Cash Management Improvement Act agreements and default procedures codified at 31 CFR part 205 ("Rules and Procedures for Efficient Federal-State Funds Transfers") and *Treasury Financial Manual Volume I*, 4A-2000 ("Overall Disbursing Rules for All Federal Agencies").

ii. *Recipients Other than States*. Consistent with 2 CFR § 200.305(b), for Recipients other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

b. *Disbursement Requests.* The Recipient shall use Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs," to request reimbursement under the Award. Substantiating invoices and/or vouchers also must be provided. Each request for the disbursement of funds shall be made to the Project Officer. Form SF-271 can be downloaded from OMB's website at www.whitehouse.gov/omb/grants/grants_forms.html.

i. *Initial Disbursement Request*. For the initial disbursement only, the Recipient must complete and submit Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," along with Form SF-271, to the Project Officer.

ii. *Interim Disbursement Requests.* All requests for interim disbursement shall be submitted using Form SF-271 and include substantiating invoices and/or vouchers.

iii. *Final Disbursement Request. See* section C.19 "Project Closeout Procedures" in these Construction ST&Cs.

3. Federal and Non-Federal Cost Sharing.

a. For purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-Federal share, or "Matching Share," means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or by third parties as a condition of the Award. Awards that include a Federal and non-Federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal share and Matching Share shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. *See* 13 CFR §§ 305.10 ("Bid underrun and overrun") and 308.1 ("Use of funds in projects constructed under projected cost"). As noted below in section B.4 "Budget Revisions and Transfers of Funds Among Cost Categories" of these Construction ST&Cs, if actual allowable costs are greater than the total approved estimated budget, the Federal share shall not exceed the total Federal dollar amount authorized by this Award.

b. The Matching Share, whether cash or in-kind, shall be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its non-Federal cost share commitment over the Award period of performance; failure to do so may result in the assignment of special award conditions or other further action as specified in section A.6 "Noncompliance with Award Provisions" of these Construction ST&Cs.

c. The Recipient must create and maintain sufficient records justifying the required Matching Share to facilitate questions, audits, and other inquiries necessary to meet EDA's requirements to safeguard Federal funds, and must provide these records if requested by EDA, auditors, or other Federal parties. *See also* section C.17 "Record-Keeping Requirements" of these Construction ST&Cs. EDA may disallow undocumented costs. *See* 2 CFR § 200.306 for additional requirements regarding cost sharing.

d. The Recipient shall show that the Matching Share is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA Investment Assistance. *See* 13 CFR § 301.5 ("Matching share requirements").

4. Budget Revisions and Transfers of Funds Among Budget Categories.

The EDA-approved budget is the budget plan for the Project. The Recipient must notify EDA of deviations from the budget or program plans in accordance with 2 CFR § 200.308 ("Revision of budget and program plans"), including any change in scope of work or the objective of the Project (even if there is no associated budget revision requiring prior written approval). If prior written approval is not required under 2 CFR § 200.308, the Recipient may request the Grants Officer's review of and guidance on proposed revisions to the budget.

a. Requests for budget revisions to the EDA-approved budget in accordance with the provisions below must be submitted through the Project Officer to the Grants Officer, who shall make the final determination on such requests and notify the Recipient in writing.

b. In accordance with 2 CFR § 200.308(g), EDA's prior written approval and an amendment executed by the Grants Officer and the Recipient using Form CD-451 or any successor form are required for budget revisions when:

   i. The revision results from changes in the scope or the objective of the Project;

   ii. The need arises for additional EDA funds to complete the Project;

   iii. The Federal share exceeds $150,000 and the cumulative amount of transfers among direct cost categories exceeds or is expected to exceed 10 percent of the total budget as last approved by EDA; and

   iv. A revision is desired that involves specific costs for which prior written approval requirements may be imposed consistent with applicable cost principles listed in subpart E of 2 CFR part 200 ("Cost Principles").

c. When an Award supports both construction and non-construction work, the Recipient must obtain prior written approval from the Grants Officer before making any fund or budget transfers from non-construction to construction or vice versa. *See* 2 CFR § 200.308(g)(5).

d. Transfers shall not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior written approval. *See* 2 CFR § 200.308.

e. *Project Underrun Amounts.* Underrun amounts shall be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized activities under this Award. EDA may approve the use of underrun funds to increase the Federal share of the Project or further improve the Project, as long as EDA determines that the use is consistent with the original purpose of the approved EDA investment. *See* 13 CFR § 308.1 ("Use of funds in projects constructed under projected cost").

f. *Additional EDA Funding in Case of Project Overrun Amounts.* In accepting this Award, the Recipient agrees to fund any overrun amounts from non-Federal sources. Additional EDA assistance for the Project may not be approved.

5. Indirect Costs and Facilities and Administrative Costs.

a. Indirect costs, or facilities and administrative ("F&A") costs for educational institutions, are generally not applicable under this Award. See the definition of indirect costs at 2 CFR § 200.56 ("Indirect (facilities & administrative (F&A)) costs").

b. When indirect costs are applicable, they will not be allowable charges against the Award unless approved under the Award and specifically included as a line item in the Award's approved budget.

c. Excess indirect costs may not be used to offset unallowable direct costs.

d. Under 2 CFR § 200.306(c) ("Cost sharing or matching"), unrecovered indirect costs, including indirect costs on cost sharing or matching, may be included as part of cost sharing or matching only with the prior written approval of EDA.

e. *Cognizant Agency for Indirect (F&A) Costs*. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas, including reviewing and approving indirect cost rates applicable to Federal grants.

   i. *Determining the Cognizant Agency for Non-Commercial Organizations*. In accordance with 2 CFR § 200.19 ("Cognizant agency for indirect costs"), the cognizant agency for indirect costs is the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. Approved rates must be accepted by other agencies, unless a Federal statute or regulation requires use of a different rate or a Federal agency awarding head or delegate approves a different rate in accordance with 2 CFR § 200.414(c) ("Indirect (F&A) costs").

      If indirect costs are permitted, but the Recipient has not previously established an indirect cost rate with a Federal agency, the Recipient may consult Appendices III–VII to 2 CFR part 200 for information on determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans:

      (1) Appendix III to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

      (2) Appendix IV to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

      (3) Appendix V to 2 CFR part 200 – State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;

      (4) Appendix VI to 2 CFR part 200 – Public Assistance Cost Allocation Plans; and

      (5) Appendix VII to 2 CFR part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.

   ii. *General Review Procedures When DOC Is the Cognizant Agency*.

      (1) Within 90 days of the Award start date the Recipient shall submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow the agency to perform the indirect cost rate proposal review.

      (2) The Recipient may use the fixed rate proposed in the indirect cost plan as a provisional rate until DOC provides a response to the submitted plan.

   iii. *When DOC Is Not the Oversight or Cognizant Agency*. When the cognizant Federal agency is not DOC, the non-Federal entity shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

f. If the Recipient entity fails to submit required documentation to DOC within 90 days of the Award start date, the Grants Officer may amend the Award to preclude the recovery of any indirect costs under the Award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the Recipient's delay in

submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

g. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of:

   i. The line item amount for the Federal share of indirect costs contained in the approved Award budget, including all budget revisions approved in writing by the Grants Officer; or

   ii. The Federal share of the total indirect costs allocable to the Award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the Award end date.

h. In accordance with 2 CFR § 200.414(g) ("Indirect (F&A) costs"), any Recipient that has a negotiated indirect cost rate may apply to the entity's cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

i. Any Recipient that has never received a negotiated indirect cost rate, except for those Recipients described in Paragraph D.1.b of Appendix VII to 2 CFR part 200 (specifically, a governmental department or agency that receives more than $35 million in direct Federal funding), may elect to charge a *de minimis* rate of 10 percent of modified total direct costs. *See* 2 CFR § 200.414(f).

6. Incurring Costs Prior to Award.

Project activities carried out prior to EDA's approval of this Award shall be carried out at the sole risk of the Recipient. Such activity may result in the rejection of the Application, the disallowance of costs, or other adverse consequences as a result of noncompliance with EDA or Federal law, including but not limited to procurement requirements, civil rights requirements, Federal labor standards, or environmental and historic preservation requirements. The Grants Officer must authorize pre-award costs in writing, and such costs must also be allowable under relevant Federal cost principles and the specific Award terms and be included in the EDA approved budget. Pre-award costs not included in the authorized budget are not allowable and may not be reimbursed. *See* 13 CFR § 302.8 ("Pre-approval Investment Assistance costs").

7. Incurring Costs or Obligating Federal Funds Beyond the Project Expiration Date.

a. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the Project, program, or activities beyond the authorized period of performance documented in the Award agreement, unless a written time extension of this Award is granted by the Grants Officer. The only costs that are authorized for a period of up to 90 calendar days following the end date of the period of performance are those strictly associated with Closeout activities. Closeout activities are generally limited to the preparation of final progress, financial, and required Project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90 calendar-day Closeout period upon a request by the Recipient as provided in 2 CFR § 200.343 ("Closeout"), as applicable.

b. The Recipient shall adhere to the development time schedule and time limits set out in the special award conditions if they differ from those provided in these Construction ST&Cs.

c. Neither DOC nor EDA has any obligation to provide any additional prospective funding. Any amendment of the Award to increase funding and to extend the period of performance is at the sole discretion of DOC and/or EDA.

8. Time Extensions.

a. Unless otherwise authorized in 2 CFR § 200.308 ("Revision of budget and program plans"), or a special award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date of the period of performance.

b. The Recipient is responsible for implementing the Project in accordance with the development time schedule contained in this Award. As soon as the Recipient becomes aware that it will not be possible to meet the development time schedule, the Recipient must notify the Grants Officer. The Recipient's notice to EDA must contain the following:

   i. An explanation of the Recipient's inability to complete work by the specified date (*e.g.*, a lengthy period of unusual weather delayed the contractor's ability to excavate the site, major re-engineering required in order to obtain State or Federal approvals, unplanned environmental mitigation required);

   ii. A statement that no other changes to the Project are contemplated;

   iii. Documentation that demonstrates there is still a bona fide need for the Project; and

   iv. A statement that no further delay is anticipated and that the Project can be completed within the revised time schedule.

   EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule and to suspend or terminate this Award if the Recipient fails to proceed with reasonable diligence to accomplish the Project as intended.

9. Tax Refunds.

Refunds of Federal Insurance Contributions Act ("FICA") or Federal Unemployment Tax Act ("FUTA") taxes received by the Recipient during or after the period of performance must be refunded or credited to DOC where the benefits were financed with Federal funds under the Award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of the Award period of performance.

10. Program Income.

For Projects that generate rental revenue (*e.g.*, buildings or real property constructed or improved for the purpose of renting or leasing space), the Recipient agrees, for the estimated useful life (as

determined by EDA) of the EDA-assisted facility, to use such income generated from the rental or lease of any Project facility in the following order of priority:

a. Administration, operation, maintenance, and repair of Project facilities in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA approved encumbrance (*e.g.*, approved mortgage) on the EDA-assisted facility.

b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA.

c. Any income in excess of paragraphs a. and b. of this section must be deducted from total allowable Project costs in accordance with 2 CFR § 200.307(e).

See 2 CFR § 200.307 ("Program income").

C. PROGRAMMATIC REQUIREMENTS.

1. Project Progress and Performance Reporting.

a. Project progress reports must be submitted in accordance with the procedures set out in 2 CFR § 200.328 ("Monitoring and reporting program performance"), as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding pending the receipt of the overdue reports; or the establishment of an account receivable for the difference between the total Federal share of outlays last reported and the amount disbursed. *See* 13 CFR § 302.18 ("Post-approval requirements").

b. Unless otherwise specified in this Award, the Project progress report will contain the following information for each Project program, function, or activity:

   i. A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;

   ii. An explanation of any delays or failures to meet the Project timetable or Project goals; and

   iii. Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

   Project progress reports shall be submitted for each calendar quarter to the Project Officer. Each Project progress report must be submitted in accordance with the deadlines outlined in the special award conditions, or, where not otherwise specified, Project progress reports will be due on a quarterly basis not later than January 31, April 30, July 31, and October 31 for the immediate previous quarter. The final Project progress report shall be submitted to EDA no more than 90 calendar days after the Project Closeout date. This reporting requirement begins with the Recipient's acceptance of this Award and ends when EDA approves Project Closeout.

   The Recipient shall submit quarterly Project progress reports to the EDA Project Officer electronically unless otherwise specified in the special award conditions.

2. **Reporting on Real Property.**

The Recipient must submit reports (using Form SF-429 "Real Property Status Report" or any successor form) at least annually on the status of real property in which EDA retains an interest, unless the Federal interest in the real property extends 15 years or longer. When EDA's interest extends for a period of 15 years or more, EDA, at its option, may require the Recipient to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years of the Award and thereafter every five years). *See* 2 CFR § 200.329 ("Reporting on real property") and section L.3.h "EDA's Interest in Award Property" of these Construction ST&Cs.

3. **Interim Reporting of Significant Project Developments.**

The Recipient must report any event that will or may have a significant impact upon the Project, including delays or adverse conditions that materially may affect the ability of the Recipient to attain Project objectives within established time periods or meet the development time schedule. The Recipient should report such events to the Project Officer in the most time-expedient way possible and then, if the initial report was not in writing, report the event to the Project Officer in writing. Such a report shall include a statement of the event or issue, a statement of the course of action taken or contemplated to resolve the matter, and any Federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. *See* 2 CFR § 200.328(d) ("Monitoring and reporting program performance").

4. **Government Performance and Results Act Reporting.**

In addition to quarterly Project progress reports, EDA may require the Recipient to report on Project performance beyond the Project Closeout date for Government Performance and Results Act ("GPRA") purposes. In no case shall the Recipient be required to submit any report more than ten years after the Project Closeout date. Data used by the Recipient in preparing reports shall be accurate and, whenever possible, from independent sources. *See* 13 CFR § 302.16 ("Accountability").

5. **Unsatisfactory Performance.**

Failure to perform the work in accordance with the Terms and Conditions of the Award and maintain at least satisfactory performance may result, at EDA's discretion, in the assignment of additional award conditions pursuant to 2 CFR § 200.207 ("Specific conditions") or other appropriate enforcement actions as specified in 2 CFR § 200.338 ("Remedies for noncompliance"). *See also* section A.6 "Noncompliance with Award Provisions" of these Construction ST&Cs.

6. **Programmatic Changes.**

   a. In accordance with 2 CFR § 200.308 ("Revisions of budget and program plans"), the Recipient shall report programmatic changes, including all changes to the scope of the Award, to the Project Officer. In accordance with section B.4 "Budget Revisions and Transfers of Funds Among Budget Categories" of these Construction ST&Cs, certain budget revisions require the prior written approval of EDA. In these cases, the Project Officer will

forward the request to the Grants Officer, who makes the final decision on approving the request. In addition, the Recipient shall request prior written approvals for certain items of cost in accordance with 2 CFR § 200.407 ("Prior written approval (prior approval)").

b. Any changes made to the Project without EDA's approval are made at the Recipient's risk of nonpayment of costs, suspension, termination, or other EDA action with respect to the Award. *See* 13 CFR § 302.7(b) ("Amendments and changes").

c. *Contract Change Orders.* After construction contracts for the Project have been executed, it may become necessary to alter them, which requires a formal contract change order that must be issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. Work on the Project may continue pending EDA review and approval of the change order, but all such work shall be at the Recipient's risk as to whether the cost of the work is eligible for EDA participation until the Recipient receives EDA's written approval for the change order. *See* 13 CFR § 305.13 ("Contract change orders").

7. Other Federal Awards with Similar Programmatic Activities.

The Recipient shall immediately notify the Project Officer and the Grants Officer in writing if, after receipt of this Award, other financial assistance is received to support or fund any portion of the scope of work incorporated into this Award. EDA will not pay for costs that are funded by other sources.

8. Beneficiary Compliance.

In the event a beneficiary of the Project fails to comply in any manner with certifications, assurances, or agreements that such beneficiary has entered into in accordance with EDA's requirements, the Recipient will reimburse the Government the Award amount or an amount to be determined by the Government pursuant to 13 CFR §§ 314.4 ("Unauthorized use of property") and 314.5 ("Federal share"). Where the Government determines that the failure of a beneficiary to comply with EDA requirements affects a portion of the property benefited by the Award, the Recipient will reimburse the Government proportionately.

9. Prohibition Against Assignment by the Recipient.

The Recipient shall not transfer, pledge, mortgage, or otherwise assign the Award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express prior written approval of the Grants Officer, which approval may be provided in a special award condition.

10. Disclaimer Provisions; Hold Harmless Requirement.

a. The United States expressly disclaims any and all responsibility or liability to the Recipient, subrecipient, or third persons for the actions of the Recipient, subrecipient, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any subaward or subcontract under this Award.

b. The acceptance of this Award or any subaward by the Recipient or subrecipient does not in any way constitute an agency relationship between the United States and the Recipient or subrecipient.

c. To the extent permitted by law, the Recipient agrees to indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project site or construction, renovation, or repair of any facility on the Project site, to the extent that such liabilities are incurred because of toxic or hazardous contamination or groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Government or its agents) on the property. *See* 13 CFR § 302.19 ("Indemnification").

11. Prohibition on Use of Third Parties to Secure Award.

Unless otherwise specified in the special award conditions to this Award, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this Award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warrant, the Government has the right to annul this Award without liability, or at its discretion, to deduct from the Award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

12. Payment of Attorneys' or Consultants' Fees.

No Award funds shall be used, directly or indirectly, to reimburse attorneys' or consultants' fees incurred in connection with obtaining Investment Assistance under PWEDA, such as, for example, preparing the Application for EDA Investment Assistance. However, ordinary and reasonable attorneys' and consultants' fees incurred for meeting Award requirements (*e.g.*, conducting a title search or preparing plans and specifications) may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. *See* 13 CFR § 302.10 ("Attorneys' and consultants' fees, employment of expediters, and post-employment restriction").

13. Recipient's Duty to Refrain from Employing Certain Government Employees.

a. Pursuant to section 606(2) of PWEDA (42 U.S.C. § 3216), for the two-year period beginning on the date EDA executes this Award, any Recipient that is a nonprofit organization, District Organization, or for-profit entity agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:

   i. On the date the Government executes this Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Department, and

   ii. Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the awarding of Investment Assistance under PWEDA.

b. In addition to the types of Recipients noted in paragraph a above, EDA may require another Eligible Applicant to execute an agreement to abide by the above-described post-employment restriction on a case-by-case basis—for example, when an institution of higher education implements activities under or related to the Investment Assistance through a separate nonprofit organization or association.

c. The two-year period and associated restrictions referenced above also shall apply beginning on the date that EDA executes any cost amendment to this Award that provides additional funds to the Recipient.

See also 13 CFR § 302.10 ("Attorneys' and consultants' fees, employment of expediters, and post-employment restriction").

14. Commencement of Construction and Project Sign.

a. *Delayed Construction Starts.* If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.

b. *Early Construction Starts.* The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA's review and concurrence. *See* 13 CFR § 305.11 ("Contract awards; early construction start").

c. *Project Sign*. The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 CFR § 305.12 ("Project sign").

15. Efficient Administration of Project.

The Recipient agrees to properly and efficiently administer, operate, and maintain the Project for its estimated useful life, as required by section 504 of PWEDA (42 U.S.C. § 3194). If the Government determines, at any time during the estimated useful life of the facility, that the Project is not being properly and efficiently administered, operated, and maintained, the Government may terminate this Award (if it is still active) and/or may take appropriate enforcement action to protect the Federal Interest in the Project, including requiring the Recipient to repay the Federal Share. *See* 13 CFR §§ 302.12 ("Project administration, operation and maintenance"), 302.18 ("Post-approval requirements"), and 314.2 ("Federal interest") through 314.5 ("Federal share").

16. Conflicts-of-Interest Rules.

a. An "Interested Party" is defined in 13 CFR § 300.3 ("Definitions") as "any officer, employee, or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants, or shareholders." An Interested Party includes the Interested Party's "Immediate Family" (defined in 13 CFR § 300.3 as "a person's spouse (or domestic partner or significant other), parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person") and other persons directly connected to the Interested Party by law or through a business organization.

b. The Recipient must disclose in writing any potential conflicts of interest to EDA or the pass-through entity. In addition, the Recipient must maintain written standards of conduct to establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain in the administration of an award. *See* 13 CFR § 302.17(a) and (b) ("Conflicts of interest"), 2 CFR § 200.112 ("Conflict of interest"), as applicable, and Forms SF-424B ("Assurances – Non-Construction Projects") and SF-424D ("Assurances – Construction Projects").

c. An Interested Party must not receive any direct or indirect financial or personal interests or benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest or benefit may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance, services, or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. *See* 13 CFR § 302.17(a) and (b).

d. Procurement-related conflicts of interest. In addition, in accordance with 2 CFR § 200.318(c) ("General procurement standards"), the Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. *See* 2 CFR §§ 200.317–200.326 ("Procurement Standards").

17. Record-Keeping Requirements.

a. *Records.* The Recipient must maintain records that document compliance with the Terms and Conditions of this Award. At a minimum, the Recipient's records must fully disclose:

   i. The amount and disposition of EDA investment assistance;

   ii. All Project expenditures and procurement actions;

   iii. The total cost of the Project that the Award funds;

   iv. Copies of all reports and disbursement requests submitted to EDA;

v. The benefits/impacts of the Project, as reported through GPRA and other reports to EDA;

vi. The amount and nature of the portion of Project costs provided by non-EDA sources;

vii. Contractor compliance with applicable Federal requirements; and

viii. Such other records as EDA determines will facilitate an effective audit.

b. *Records Retention*. In general and in accordance with 2 CFR § 200.333 ("Retention requirements for records"), all records pertinent to this Award must be retained for a period of three years from the date of submission of the final Project expenditure report (the final Form SF-271 for disbursement). The only exceptions are the following:

i. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final actions taken.

ii. When the Recipient is notified in writing by EDA, the cognizant agency for either audit or indirect costs, the oversight agency for audit, or the relevant pass-through entity to extend the retention period, it must retain the records as directed.

iii. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition of the relevant real property or equipment.

iv. When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the Recipient.

v. Records for program income transactions after the period of performance. In some cases Recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the Recipient's fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation*. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.

(2) *If not submitted for negotiation*. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

c. *Monitoring and Reporting Obligations.* The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer if records are lost,

destroyed, or are otherwise no longer available, or if the Recipient anticipates that it will not be able to comply with the record retention requirements under the Award for the general retention periods noted above. *See* 13 CFR § 302.14 ("Records"), as applicable.

18. Termination Actions.

a. In accordance with 2 CFR § 200.339 ("Termination"), this Award may be terminated in whole or in part as follows:

i. *Termination by EDA for the Recipient's Failure to Comply with the Terms and Conditions of the Award*. EDA may terminate this Award, in whole or in part, if the Recipient fails to comply with the Terms and Conditions of the Award, including if:

(1) Any representation made by the Recipient to the Federal awarding agency in connection with the Application for Federal assistance is incorrect or incomplete in any material respect;

(2) The Project has changed substantially, without EDA approval, so as to affect significantly the accomplishment of the Project as intended (including an unauthorized use of property as provided in 13 CFR § 314.4 ("Unauthorized use of property"));

(3) The Recipient has violated commitments it made in its Application and supporting documents or has violated any of the Terms and Conditions of the Award;

(4) The conflicts-of-interest rules at 13 CFR § 302.17 ("Conflicts of interest") are violated; or

(5) The Recipient fails to report immediately to the Federal awarding agency any change of authorized representative acting in lieu of or on behalf of the Recipient.

ii. *Termination by EDA for Cause.* EDA may terminate this Award for cause if required by a circumstance beyond EDA's control, such as a Congressional mandate.

iii. *Termination by the Recipient.* The Recipient may terminate this Award in whole or in part upon sending the EDA Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EDA determines in the case of partial termination that the reduced or modified portion of the EDA Award will not accomplish the purposes for which the EDA Award was made, EDA may terminate the Award in its entirety.

iv. *Termination Upon Mutual Agreement*. EDA and the Recipient may mutually agree to terminate this Award in whole or in part. In such cases, EDA and the Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

b. If the Award is wholly or partially terminated, the Recipient remains responsible for compliance with the requirements in 2 CFR §§ 200.343 ("Closeout") and 200.344 ("Post-closeout adjustments and continuing responsibilities").

19. Project Closeout Procedures.

As noted above in section C.15 "Efficient Administration of Project" of these Construction ST&Cs, after construction is completed and the Project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate, and maintain the Project for its estimated useful life (as determined by EDA) in accordance with its original purpose. *See* 13 CFR § 302.12 ("Project administration, operation and maintenance"). The Recipient must comply with all Award requirements and maintain records to document such compliance, which shall be made available for inspection by EDA or other Government officials as required.

a. *Final Disbursement*. When Project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the Project from the contractor, the Recipient can begin the Closeout process by submitting the following documentation to EDA:

   i. A request for final disbursement on an executed Form SF-271;

   ii. A written certification that all costs charged against this Award (Federal and non-Federal shares) are for eligible activities and represent allowable costs, for which there is documentation in the Recipient's records;

   iii. An executed certificate of final acceptance signed by the Recipient and the Recipient's architect/engineer;

   iv. The Recipient's certification that its currently valid single or program-specific audit in accordance with subpart F of 2 CFR part 200 ("Audit Requirements"), if applicable, does not contain any material findings (if the Recipient's currently valid audit does contain material findings, the Recipient shall submit the applicable audit preferably via e-mail to the Project Officer, who will review with the Grants Officer);

   v. The Recipient's certification that its currently valid audit (in accordance with subpart F of 2 CFR part 200), if applicable, has been submitted to the Federal Audit Clearinghouse; and

   vi. Other documentation as may be required by EDA.

   EDA shall advise the Recipient of costs determined to be allowable and unallowable. If a balance of this Award is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received an amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

   As noted above, if the Recipient's currently valid audit completed pursuant to subpart F of 2 CFR part 200 contains material findings, the Recipient shall submit the audit, preferably via e-mail, to the Project Officer, who will review with the Grants Officer before final disbursement. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the Project Officer.

b. The Recipient shall submit, within 90 calendar days after the Project Closeout date, all financial, performance, and other reports as required by the Terms and Conditions of this Award. The Grants Officer may extend the 90 calendar day Closeout period upon a written request from the Recipient.

c. As required under GPRA and in accordance with a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely report the impacts of the Project, especially in terms of job creation and private investment leveraging.

d. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under this Award no later than 90 calendar days after acceptance of the Project from the contractor or within 90 calendar days of the expiration date of this Award, whichever occurs earlier.

e. In accordance with 2 CFR § 200.344 "Post-closeout adjustments and continuing responsibilities," the Closeout of this Award does not affect any of the following:

   i. The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;

   ii. The Recipient's obligation to return any funds due as a result of later corrections or other transactions;

   iii. Audit requirements per subpart F of 2 CFR part 200; and

   iv. Requirements for property management and disposition, records retention, and performance measurement reports. *See* subpart D of 2 CFR part 200 ("Post Federal Award Requirements"), as applicable.

20. Freedom of Information Act.

EDA is responsible for meeting its Freedom of Information Act ("FOIA") (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 CFR part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of Applications and other information submitted by applicants and Recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain Application and other submitted information publicly available. Accordingly, as set forth in 15 CFR § 4.9, the Recipient should identify in its Application any "business information" it believes to be protected from disclosure pursuant to 5 U.S.C. § 552(b)(4).

D. ADDITIONAL REQUIREMENTS RELATING TO CONSTRUCTION PROJECTS.

The Recipient and any subrecipients must, in addition to other statutory and regulatory requirements detailed in these Construction ST&Cs and the assurances made to EDA in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable Federal, State, territorial, and local laws, and in particular, the following Federal public laws (and the regulations issued thereunder), executive orders, OMB circulars, Uniform Guidance, and local law requirements.

1. **The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141–3144, 3146, 3147; 42 U.S.C. § 3212)**, which requires minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages that the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the Project is to be performed, or in the District of Columbia if the Project is to be performed there.

2. **The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708)**, which provides work hour standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of a Federal public works project.

3. **The National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 *et seq.*), and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800)**, which require stewardship of historic properties in projects involving Federal funds.

4. **The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 *et seq.*)**, which requires appropriate surveys and preservation efforts if a Federally licensed project may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data.

5. **The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*)**, and the regulations issued thereunder, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.

6. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*)**, and implementing regulations issued at 49 CFR part 24 ("Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs"), which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a project financed wholly or in part with Federal financial assistance.

7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 *et seq.*)**, which establishes energy efficiency performance standards for the construction of new residential and commercial structures undertaken with Federal financial assistance.

8. **Compliance with Local Construction Requirements.** The Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

E. NONDISCRIMINATION REQUIREMENTS.

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient agrees to comply with the nondiscrimination requirements below.

1. **Statutory Provisions.**

   a. **Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*)** and DOC implementing regulations published at 15 CFR part 8 ("Nondiscrimination in Federally Assisted Programs of the Department of Commerce—Effectuation of Title VI of the Civil Rights Act of 1964"), which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance. *See* the Department's Title VI compliance provisions at 15 CFR §§ 8.7 ("Cooperation, compliance reports and reviews and access to records") through 8.15 ("Effect on other laws; supplementary instructions; coordination").

b. **Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq*.)**, which prohibits discrimination on the basis of sex under Federally assisted education programs or activities.

c. **Pub. L. No. 92-65, 42 U.S.C. § 3123,** which proscribes discrimination on the basis of sex in EDA assistance provided under PWEDA; Pub. L. No. 94-369, 42 U.S.C. § 6709, which proscribes discrimination on the basis of sex under the Local Public Works Program; and the Department's implementing regulations at 15 CFR §§ 8.7 ("Cooperation, compliance reports and reviews and access to records") -8.15 ("Effect on other laws; supplementary instructions; coordination").

d. **The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq*.) (ADA)**, which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereof, as well as public or private entities that provide public transportation.

e. **Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794)**, and DOC implementing regulations published at 15 CFR part 8b ("Prohibition of Discrimination Against the Handicapped in Federally Assisted Programs Operated by the Department of Commerce"), which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

   For purposes of complying with the accessibility standards set forth in 15 CFR § 8b.18(c) ("New construction"), Recipients must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act ("ADA") (28 CFR part 35 ("Nondiscrimination on the Basis of Disability in State and Local Government Services"); 75 *Fed. Reg.* 56164, as amended by 76 *Fed. Reg.* 13285) and Title III of the ADA (28 CFR part 36 ("Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities"); 75 *Fed. Reg.* 56236, as amended by 76 *Fed. Reg.* 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

f. **The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq*.)** and DOC implementing regulations published at 15 CFR part 20 ("Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance"), which prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

g. Other applicable Federal statutes, regulations, and executive orders, and other applicable nondiscrimination laws.

2. Other Provisions.

a. Parts II and III of Executive Order 11246 (30 *Fed. Reg.* 12319, 1965), as amended by Executive Orders 11375 (32 *Fed. Reg.* 14303, 1967) and 12086 (43 *Fed. Reg.* 46501, 1978), requiring Federally assisted construction contracts to include the nondiscrimination provisions of sections 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order 11246 (41 CFR § 60-1.4(b) ("Equal Opportunity Clause"), 1991).

b. Executive Order 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency ("LEP"), and develop and implement a system to provide those services so that LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 ("Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", 68 *Fed. Reg.* 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that Recipients provide meaningful access to their LEP applicants and beneficiaries.

3. Title VII Exemption for Religious Organizations.

Generally, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq*.) provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

F. AUDITS.

Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq*.), an audit of the Award may be conducted at any time. The Department's Inspector General, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. *See* 2 CFR § 200.336 ("Access to records"). When the Office of the Inspector General ("OIG") requires a program audit on a DOC Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

1. Organization-Wide, Program-Specific, and Project Audits.

a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by subpart F of 2 CFR part 200 ("Audit Requirements"). Recipients that expend $750,000 or more in Federal awards during their fiscal year shall have an audit conducted for that year in accordance with the requirements set forth in subpart F of 2 CFR part 200. Within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of the audit period, a copy of the audit shall be submitted electronically to the Federal Audit Clearinghouse website at http://harvester.census.gov/sac/.

If it is necessary to submit using paper, the address for submission is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

Within 90 days of the end of the fiscal year of a Recipient subject to subpart F of 2 CFR part 200, the entity is responsible for notifying the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, the Recipient expended during its fiscal year.

A Recipient that expends less than $750,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted at 2 CFR § 200.503 ("Relation to other audit requirements"), but records must be available for review and audit by EDA, DOC, or other designated Government officials.

Failure to provide audit reports within the timeframes specified may result in appropriate enforcement action, up to and including termination of the Award, and may jeopardize eligibility for receiving future DOC awards.

b. Unless otherwise specified in the Terms and Conditions of this Award, for-profit hospitals, commercials entities, and other organizations that are not subject to subpart F of 2 CFR part 200 ("Audit Requirements") shall have a program specific audit performed by an independent auditor when the Federal share amount awarded is $750,000 or more over the duration of the period of performance. An audit is required at least once every two years using the following schedule for audit report submission:

   i. For Awards where the period of performance is less than two years, an audit is required within 90 calendar days of the end of the period of performance to cover the entire Project (the Project Closeout period is included in the 90 days);

   ii. For Awards with a two- or three-year period of performance, an audit is required within 90 calendar days after the end of the first year to cover Year 1, which is the period of time when Federal funding is available for obligation by the Recipient, and within 90 calendar days of the end of the period of performance to cover Year 2 and Year 3 (if applicable) (the Project Closeout period is included in the 90 days); or

   iii. For Awards with a four- to five-year period of performance, an audit is required within 90 calendar days after the end of the first year to cover Year 1, within 90 calendar days after the end of the third year to cover Year 2 and Year 3, and within 90 calendar days of the end of the period of performance to cover Year 4 and Year 5 (if applicable) (the Project Closeout period is included in the 90 days).

c. EDA's Public Works and Economic Adjustment Assistance programs generally have specific audit guidelines that will be incorporated into the Award and may be found in the annual Compliance Supplement, which is Appendix XI to 2 CFR part 200 and is available on OMB's website (https://www.whitehouse.gov/omb/circulars_default). When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 CFR § 200.507

("Program-specific audits"). The Recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer.

d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. In accordance with 2 CFR § 200.331(d)(3) ("Requirements for pass-through entities"), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Federal Award provided to a subrecipient.

2. Requirement to Submit a Copy of the Audit to EDA.

If the Recipient's currently valid audit required under subpart F of 2 CFR part 200 ("Audit Requirements") contains material findings, the Recipient must submit a copy of the audit to the Project Officer, who will review it with the Grants Officer. *See also* section C.19.a.iv "Project Closeout Procedures" of these Construction ST&Cs.

3. Audit Resolution Process.

a. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 *Fed. Reg.* 4053), a Recipient has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt after an audit:

i. The Recipient has 30 business days from the date of the transmittal of the "Draft Audit Report" to submit written comments and documentary evidence.

ii. The Recipient has 30 business days from the date of the transmittal of the "Final Audit Report" to submit written comments and documentary evidence. There will be no extension of this deadline.

iii. EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an "Audit Resolution Determination Letter." The Recipient has 30 business days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.

iv. An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

v. The EDA or DOC, as applicable, shall review the Recipient's appeal. EDA shall notify the Recipient of the results in an Appeal Determination Letter. After the opportunity to

appeal has expired or after the appeal determination has been rendered, EDA or DOC will not accept any further documentary evidence from the Recipient. No other EDA or DOC administrative appeals are available.

G. DEBTS.

1. Payment of Debts Owed the Federal Government.

a. The Recipient must promptly pay any debts determined by the Federal Government to be owed by the Recipient. Any funds paid to the Recipient in excess of the amount to which the Recipient is finally determined to be entitled under the terms of the Award constitute a debt to the Federal Government. In accordance with 2 CFR § 200.345 ("Collection of amounts due"), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:

   i. Making an administrative offset against other request for reimbursement;

   ii. Withholding advance payments otherwise due to the Recipient; or

   iii. Taking any other action permitted by Federal statute.

b. DOC debt collection procedures are set out in 15 CFR part 19. In accordance with 2 CFR § 200.345 ("Collection of amounts due"), failure to pay a debt owed to the Federal Government shall result in the assessment of interest, penalties and administrative costs under 31 U.S.C. § 3717 and 31 CFR § 901.9. DOC entities will transfer any DOC debt that is more than 180 calendar days delinquent to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as "cross-servicing," pursuant to 31 U.S.C. § 3711(g), 31 CFR § 285.12, and 15 CFR § 19.9, and may take further action as specified in section A.6 "Noncompliance with Award Provisions" of these Construction ST&Cs. Funds for payment of a debt must not come from other Federally sponsored programs, and DOC may conduct on-site visits, audits and other reviews to verify that other Federal funds have not been used to pay a debt.

2. Late Payment Charges.

a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act, as amended (31 U.S.C. § 3701 *et seq*.). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate ("CVFR"). The CVFR is available online at http://www.fms.treas.gov/cvfr/index.html and also published by the Department of the Treasury in the *Federal Register* (http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR) and in the *Treasury Financial Manual Bulletin*. The assessed rate shall remain fixed for the duration of the indebtedness.

b. Penalties shall accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges (*i.e.*, the costs of processing and handling a delinquent debt) shall be determined by the DOC entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

3. **Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees.**

   Pursuant to 31 U.S.C. § 3720B and 31 CFR § 901.6, unless waived, DOC is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

4. **Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.**

   Pursuant to 28 U.S.C. § 3201(e), unless waived by DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).

The Recipient shall comply with the provisions of 2 CFR part 1326 ("Nonprocurement Debarment and Suspension") (published in the *Federal Register* on December 21, 2006, 71 *Fed. Reg*. 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions through either primary or lower-tier covered transactions, and which set forth the responsibilities of Recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors. In addition, as provided in section K.4.b "Applicability of Provisions to Subawards, Contracts, and Subcontracts" of these Construction ST&Cs, in accordance with subpart C of 2 CFR part 1326, the Recipient must include a term or condition in lower tier transactions (subawards, contracts, and subcontracts) requiring lower tier participants to comply with subpart C (entitled "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons") of the OMB guidance in 2 CFR part 180 "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."

I. DRUG-FREE WORKPLACE.

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102), and DOC's implementing regulations found at 15 CFR part 29 ("Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)") which require that the Recipient take steps to provide a drug-free workplace.

J. LOBBYING RESTRICTIONS.

1. *Statutory and Regulatory Provisions.* The Recipient shall comply with 2 CFR § 200.450 ("Lobbying"), which incorporates the provisions of 31 U.S.C. § 1352; the "New Restrictions on Lobbying" published at 55 *Fed. Reg.* 6736 (February 26, 1990); and OMB guidance and notices on lobbying and restrictions. In addition, the Recipient must comply with the DOC's regulations published at 15 CFR part 28, which implement the "New Restrictions on Lobbying." These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of

non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. *See* 2 CFR § 200.450(b) and (c).

2. *Disclosure of Lobbying Activities.* Any Recipient that receives more than $100,000 in Federal funding shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Recipient must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Project Officer.

3. *Special Provisions Relating to Indian Tribes.* As set out in 31 U.S.C. § 1352, special provisions are applicable to Indian tribes, tribal organizations, and other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with DOC policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Federal awards granted to American Indian and Alaska Native tribal governments generally may provide for preference in contracting, hiring, firing, and the payment of a TERO fee. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for the performance of the Federal award," as provided under 2 CFR § 200.403 ("Factors affecting allowability of costs").

K. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS.

1. Code of Conduct for Recipients.

a. *General conflicts-of-interest requirements*. The Recipient must comply with EDA's regulation at 13 CFR § 302.17 ("Conflicts of interest"), which articulates EDA's requirements to prevent conflicts of interest, which generally exist when an Interested Party participates in a matter that has a direct and predictable effected on the Interested Party's personal or financial interests or there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. In addition, in accordance with 2 CFR § 200.112 ("Conflict of interest"), the Recipient must disclose to EDA in writing any potential conflict of interest. In addition, pursuant to the certification in Form SF-424D, paragraph 7, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflicts of interest or personal gain in the administration of this Award.

b. *Procurement-related conflicts of interest*. In addition, in accordance with 2 CFR § 200.318 ("General procurement standards"), the Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts.

2. Applicability of Award Provisions to Subrecipients.

a. The Recipient or pass-through entity shall require all subrecipients, including lower tier subrecipients, under the Award to comply with the provisions of this Award, including applicable provisions of the Uniform Guidance (2 CFR part 200), and all associated terms and conditions. *See* 2 CFR §§ 200.330 ("Subrecipient and contractor determinations") through 200.332 ("Fixed amount subawards") and 2 CFR § 200.101(b)(1) ("Applicability"), which describes the applicability of 2 CFR part 200 to various types of Federal awards.

b. In accordance with 2 CFR § 200.331 ("Requirements for pass-through entities"), all pass-through entities must:

i. *Subaward Identification*. Clearly identify every subaward to the subrecipient at the time of the subaward, including subsequent subaward modification. In accordance with 2 CFR § 200.331(a), required information includes:

(1) All Award information data elements set out at 2 CFR § 200.331(a)(1);

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal Award is used in accordance with Federal statutes, regulations and the Terms and Conditions of the Award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency, including identification of required financial and performance reports;

(4) Indirect cost rate information in accordance with 2 CFR § 200.331(a)(4);

(5) Access requirements for the subrecipient's records and financial statements in accordance with 2 CFR § 200.331(a)(5); and

(6) Appropriate terms and conditions concerning closeout of the subaward.

ii. *Risk-Based Subrecipient Evaluation*. Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring in accordance with 2 CFR § 200.331(b).

iii. *Subaward Conditions*. Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in 2 CFR § 200.207 ("Specific conditions").

iv. *Subrecipient Monitoring*. In accordance with 2 CFR § 200.331(d), monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal requirements, and that the subaward performance goals are achieved. Subrecipient monitoring must include:

(1) Reviewing financial and programmatic reports required by the pass-through entity;

(2) Following up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means; and

(3) Issuing a management decision for audit findings pertaining to the Award provided to the subrecipient from the pass-through entity as required by 2 CFR § 200.521 ("Management decision").

v. *Utilizing Risk-Based Monitoring Tools*. In accordance with 2 CFR § 200.331(e), depending on the Recipient's evaluation of each subrecipient's risk, utilize appropriate monitoring tools, including training and technical assistance, performing on-site reviews, and arranging agreed-upon-procedures engagements as described in 2 CFR § 200.425 ("Audit services").

vi. *Subrecipient Audits*. Verify that every subrecipient is audited as required by subpart F of 2 CFR part 200 ("Audit Requirements") when it is expected that the subrecipient's Federal awards expended during the fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501 ("Audit requirements").

vii. *Necessary Adjustments to the Pass-Through Entity's Records*. Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

viii. *Enforcement Action*. Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR § 200.338 ("Remedies for noncompliance") and in applicable program regulations.

See also 2 CFR § 200.331 for the full text of requirements for pass-through entities.

3. Competition and Codes of Conduct for Subawards.

a. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.

b. The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he or she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the Recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

4. Applicability of Provisions to Subawards, Contracts, and Subcontracts.

a. The Recipient shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under $25,000 not requiring the consent of a DOC official) are subject to subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to 15 CFR part 28, "New Restrictions on Lobbying."

Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, Applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying–Lower Tier Covered Transactions," completed without modification.

b. The Recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts) requiring lower tier participants to comply with subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."

c. Required subaward and contractual provisions:

i. The Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding $100,000 in Federal funds that the subaward, contract, or subcontract is subject to 31 U.S.C. § 1352, as implemented at 15 CFR part 28 ("New Restrictions on Lobbying"). The Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Project Officer within 30 days following the end of the calendar quarter.

ii. In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 CFR § 200.326 ("Contract provisions"), all contracts made by the Recipient under this Award must contain the applicable provisions set out in Appendix II to 2 CFR part 200 ("Contract Provisions for Non-Federal Entity Contracts Under Federal Awards"), which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. *See* Appendix II to 2 CFR part 200 for a full explanation of these requirements.

5. **Pilot Program for Enhancement of Employee Whistleblower Protections.**

The National Defense Authorization Act ("NDAA") for Fiscal Year 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program for whistleblower protection. It applies to all DOC awards, subawards, and contracts under awards issued beginning July 1, 2013 through January 1, 2017. This term implements that law.

In accordance with 41 U.S.C. § 4712, an employee of a Recipient or contractor under a Federal award or subaward may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award or subaward or contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority related to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award or subaward or contract under a Federal award or subaward. These persons or bodies include:

a. A Member of Congress or a representative of a committee of Congress.

b. An Inspector General.

c. The Government Accountability Office.

d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.

e. An authorized official of the Department of Justice or other law enforcement agency.

f. A court or grand jury.

g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Recipients and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

6. **Small Businesses, Minority Business Enterprises, and Women's Business Enterprises.**

In accordance with 2 CFR § 200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms"), the Recipient must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. DOC encourages Recipients to utilize small businesses, minority business enterprises, and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency ("MBDA") within DOC will assist Recipients in matching qualified minority business enterprises with contract opportunities. For further information, the Recipient may visit MBDA's website at http://www.mbda.gov or contact MBDA via telephone or mail:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.

Washington, D.C. 20230
(202) 482-0101

7. Subaward to or Contract with a Federal Agency.

a. The Recipient, contractor and/or subcontractor shall not subgrant or subcontract any part of the approved Project to any agency or employee of DOC or any other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.

b. The Recipient must submit requests for approval of such action to the Project Officer, who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Administration and Transactions for review prior to making the final determination. The Grants Officer will notify the Recipient in writing of the final determination.

8. EDA Contracting Provisions for Construction Projects.

The Recipient shall use the "*EDA Contracting Provisions for Construction Projects*" as guidance in developing all construction contracts. The "*EDA Contracting Provisions for Construction Projects*" lists applicable EDA and other Federal requirements for construction contracts.

L. PROPERTY.

1. Standards.

With respect to any property acquired or improved in whole or in part with EDA investment assistance under this Award, the Recipient shall comply with the Property Standards set forth at 2 CFR §§ 200.310 ("Insurance coverage") through 200.316 ("Property trust relationship"), and EDA's regulations at 13 CFR part 314. Property acquired or improved in whole or in part by the Recipient under this Award may consist of real property; personal property, including equipment and supplies; and intangible property, such as money, notes, and security interests. Any property reports required under 2 CFR §§ 200.310 through 200.316, such as periodic inventories and requests for disposition instructions, must be submitted to the Grants Officer through the Project Officer on Form SF-428 and/or SF-429, as applicable. *See also* section C.2 "Reporting on Real Property" of these Construction ST&Cs.

2. Title.

a. Title to equipment, supplies, and intangible property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient. The use, management and disposition of equipment, supplies, and intangible property acquired in whole or in part under this Award shall be in accordance with 2 CFR §§ 200.313 ("Equipment"), 200.314 ("Supplies"), and 200.315 ("Intangible property"), as applicable, and EDA regulations at 13 CFR part 314. *See also* section O.4 "Intellectual Property Rights" of these Construction ST&Cs.

b. Title to real property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient, subject to the condition that the Recipient uses the real property

for the authorized purpose of the Project. *See* 2 CFR § 200.311 ("Real property") and EDA regulations at 13 CFR part 314.

3. EDA's Interest in Award Property.

a. *General - Evidence of Title*. As stated in section A.4 "Grant Recipient as Trustee" of these Construction ST&Cs, real property, equipment, and intangible property acquired or improved under this Award must be held in trust by the Recipient as trustee for the beneficiaries of the Project for which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Project Officer, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest).

Before advertising for construction bids or at such other time as EDA requires, the Recipient must furnish evidence, satisfactory in form and substance to the Government, that title to real property required for the Project (other than property of the United States and as provided in 13 CFR § 314.7(c) ("Title")) is vested in the Recipient and that such easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by the Government. All liens, mortgages, other encumbrances, reservations, reversionary interests, or other restrictions on title or the Recipient's interest in the property must be disclosed to EDA. With limited exceptions set forth at 13 CFR § 314.6(b) ("Encumbrances") or as otherwise authorized by EDA, Recipient-owned property acquired or improved in whole or in part with EDA investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered. *See* 13 CFR § 314.6.

b. *Recording EDA's Interest in Real Property*.

i. For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute and furnish to the Government, prior to initial Award disbursement, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA's interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may require such statement after initial Award disbursement in the event that grant funds are being used to acquire such property. The statement must specify the estimated useful life of the Project and shall include but not be limited to the disposition, encumbrance, and the Federal Share compensation requirements. *See* 13 CFR §§ 314.1 ("Definitions") and 314.8(a) ("Recorded statement for real property"). *See also* 2 CFR § 200.316 ("Property trust relationship").

ii. This lien, covenant, or other statement of the Government's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with applicable law. EDA may require an opinion of counsel for the Recipient to substantiate that the document was validly executed and properly recorded. *See* 13 CFR § 314.8(b).

iii. Facilities in which the EDA investment is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs L.3.b.i and ii above. *See* 13 CFR § 314.8(c).

iv. In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect EDA's interest in the Project property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with section L.3.b.i above is not reasonably available. The terms and provisions of the relevant instrument shall be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services or letters of credit shall be paid by the Recipient. *See* 13 CFR § 314.8(d).

c. *Recording EDA's Interest in Personal Property.* For all Projects involving the acquisition or improvement of significant items of personal property, including but not limited to ships, machinery, equipment, removable fixtures, or structural components of buildings, the Recipient shall execute a security interest, covenant, or other statement of EDA's reversionary interest in the personal property acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law (usually accomplished by filing a Uniform Commercial Code Financing Statement (Form UCC-1), as provided by State law), with continuances re-filed as appropriate. EDA may require an opinion of counsel for the Recipient to substantiate that the Form UCC-1 or other filing was validly executed and properly recorded. *See* 13 CFR § 314.9 ("Recorded statement for personal property").

d. The Recipient acknowledges that the Government retains an undivided equitable reversionary interest in property acquired or improved in whole or in part with grant funds made available through this Award throughout the estimated useful life (as determined by EDA) of the Project, except in applicable instances set forth at 13 CFR § 314.7(c) ("Title"). *See* 13 CFR § 314.2(a) ("Federal interest").

e. The Recipient agrees that if any interest in property acquired or improved in whole or in part with EDA investment assistance is disposed of, encumbered or alienated in any manner, or no longer used for the authorized purposes of the Award during the Project's estimated useful life without EDA's written approval, the Government will be entitled to recover the Federal Share, as defined at 13 CFR § 314.5 ("Federal share"). If, during the Project's estimated useful life, the property is no longer needed for the purposes of the Award, as determined by EDA, EDA may permit its use for other acceptable purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. *See* 13 CFR § 314.3(b) ("Authorized use of property").

f. For purposes of any lien or security interest, the amount of the Federal Share shall be the portion of the current fair market value of any property (after deducting any actual and reasonable selling and repair expenses incurred to put the property into marketable condition) attributable to EDA's participation in the Project. *See* 13 CFR § 314.5 ("Federal share").

g. The alienation of Award property includes sale or other conveyance of the Recipient's interest, leasing or mortgaging the property, or granting an option for any of the foregoing.

h. In accordance with 2 CFR § 200.329 ("Reporting on real property"), the Federal awarding agency or pass through entity must require a non-Federal entity to submit reports (using Form SF-429 "Real Property Status Report" or any successor form) at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal Interest in the real property extends 15 years or longer. In those instances where the Federal Interest attached is for a period of 15 years or more, the Federal awarding agency or

pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years and thereafter every five years). The Federal awarding agency or pass-through entity may also require a non-Federal entity to periodically submit reports (using Form SF-428 "Tangible Personal Property Report" or any successor form) concerning tangible personal property in which the Federal Government retains an interest. In addition, the Federal awarding agency or pass-through entity may require a non-Federal entity to submit Form SF-429 and/or Form SF-428 in connection with a non-Federal entity's request to acquire, encumber, dispose of, or take any other action pertaining to real property or tangible personal property acquired or improved, in whole or in part, under this Award or pertaining to Federally owned property under this Award. *See also* section C.2 "Reporting on Real Property" of these Construction ST&Cs.

4. Insurance and Bonding.

a. *Insurance*. The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided for property owned by the Recipient. Federally owned property need not be otherwise insured unless required by the Terms and Conditions of the Award. *See* 2 CFR § 200.310 ("Insurance coverage").

b. *Bonding*. If the Award exceeds the simplified acquisition threshold as defined at 2 CFR § 200.88, EDA may accept the Recipient's or subrecipient's bonding policy and requirements if EDA or the pass-through entity determines that the Federal Interest is adequately protected. If not, the following minimum requirements shall apply:

i. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

ii. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

iii. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. *See* 2 CFR § 200.325 ("Bonding requirements").

5. Leasing Restrictions.

Leasing or renting of facilities or property is prohibited unless specifically authorized by EDA. The Recipient agrees that any leasing or renting of any facilities or property involved in this Project will be subject to the following:

a. That said lease arrangement is consistent with the authorized general and special purpose of the Award;

b. That said lease arrangement is for adequate consideration; and

c. That said lease arrangement is consistent with applicable EDA requirements concerning but not limited to nondiscrimination and environmental compliance.

6. Eminent Domain.

The Recipient will use funds solely for the authorized purpose of the Project. Pursuant to Executive Order 13406, "Protecting the Property Rights of the American People," the Recipient agrees:

a. Not to exercise any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and

b. Not to accept title to land, easements, or other interests in land acquired by the exercise of any power of eminent domain for use in connection with the Project for such purposes.

The Recipient agrees that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without the prior written consent of EDA is an unauthorized use of the Project. If the Recipient puts the Project to an unauthorized use, the Recipient shall compensate EDA for its fair share in accordance with 13 CFR §§ 314.4 ("Unauthorized use of property") and 314.5 ("Federal share"), as the same may be amended from time to time.

7. Disposal of Real Property.

a. During the estimated useful life of the Project, if EDA and the Recipient determine that property acquired or improved in whole or in part with EDA investment assistance is no longer needed for the original purposes of this Award, EDA may, in its sole discretion, approve use of the property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. *See* 13 CFR § 314.3(b) ("Authorized use of property").

b. When property is not disposed of as provided in section L.7.a above, the Government shall determine final disposition and must be compensated by the Recipient for the Federal Share of the value of the property, plus costs and interest, as provided in 13 CFR § 314.4 ("Unauthorized use of property").

M. FEDERAL ENVIRONMENTAL REQUIREMENTS.

Environmental impacts must be considered by Federal decision-makers in their decisions whether or not to approve: (i) a proposal for Federal assistance; (ii) the proposal with mitigation; or (iii) a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts of the projects funded with Federal assistance on the environment. Each Recipient must comply with all environmental standards, to include those prescribed under the following statutes and executive orders, and shall identify to the awarding agency any impact a proposed project may have on the environment. In some cases, Award funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit additional environmental compliance information

sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

1. **The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq*.).**

   The National Environmental Policy Act ("NEPA") and the Council on Environmental Quality ("CEQ") implementing regulations (40 CFR parts 1500–1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the Award activities remain subject to Federal authority and control. Recipients are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency in complying with NEPA. Recipients may also be requested to assist EDA in drafting an environmental assessment if EDA determines an assessment is required. Until the appropriate NEPA documentation is complete, and if any additional information is required during the period of performance to assess Project environmental impacts, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit the appropriate NEPA documentation sufficient to enable EDA to make an assessment on any environmental impacts of a Project.

2. **National Historic Preservation Act (54 U.S.C. § 300101 *et seq*.).**

   Section 106 of the National Historic Preservation Act ("NHPA") (54 U.S.C. § 300101 *et seq.* (formerly codified at 16 U.S.C. § 470f)) and the Advisory Council on Historic Preservation implementing regulations (36 CFR part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients are required to identify to the awarding agency any effects the Award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist EDA in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects on historic properties. Until the appropriate NHPA consultations and documentation are complete and if any additional information is required during the period of performance in order to assess Project impacts on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit any information sufficient to enable EDA to make the requisite assessment under the NHPA.

3. **Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371–4375).**

   Federally supported public works facilities and activities that affect the environment shall be implemented in compliance with policies established under existing law.

4. **Clean Air Act (42 U.S.C. § 7401 *et seq.)*, Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.)* (Clean Water Act), and Executive Order 11738 ("Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans").**

   The Recipient must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq*.), Clean Water Act (33 U.S.C. § 1251 *et seq*.), and Executive Order 11738 (38 *Fed. Reg.* 25161, 1973), and shall not use a facility on the Environmental Protection Agency's ("EPA's") *List of*

Violating Facilities (this list is incorporated into the Excluded Parties List System located at https://www.sam.gov/portal/public/SAM/) in undertaking work that is nonexempt under 2 CFR § 1532, and shall notify the Project Officer in writing if it intends to use a facility that is on the EPA's *List of Violating Facilities* or knows that the facility has been recommended to be placed on the list.

5. **The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f *et seq*.).**

   This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

6. **Executive Order 11988 ("Floodplain Management") and Executive Order 11990 ("Protection of Wetlands").**

   Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

7. **The Flood Disaster Protection Act (42 U.S.C. § 4002 *et seq*.), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration ("FEMA") or by EDA.**

   Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

8. **The Coastal Zone Management Act (16 U.S.C. § 1451 *et seq*.).**

   Funded projects must be consistent with a coastal State's approved management plan for the coastal zone.

9. **The Coastal Barrier Resources Act (16 U.S.C. § 3501 *et seq.*).**

   Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

10. **The Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq*.).**

    This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

11. **The Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq*.).**

    This Act requires the evaluation of impacts to fish and wildlife from Federally assisted proposed water resource development projects.

12. **The Endangered Species Act (16 U.S.C. § 1531 *et seq*.).**

    The Recipient must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions with Federal financial assistance and to conduct the required reviews under the Endangered Species Act, as applicable.

13. **The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, more commonly known as Superfund) (42 U.S.C. § 9601 *et seq*.), and the Community Environmental Response Facilitation Act (Pub. L. No. 102-426, 42 U.S.C. §§ 9601 note *et seq.* and 9620(h)(4).).**

    These requirements address responsibilities related to hazardous substance releases, threatened releases, and environmental cleanup. They also impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to State and local emergency responders.

14. **The Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.).**

    This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

15. **Executive Order 12898 ("Environmental Justice in Minority Populations and Low-Income Populations").**

    Federal agencies are required to identify and address any disproportionately high adverse human health or environmental effects of Federal programs, policies, and activities on low-income and minority populations.

16. **The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4821 *et seq*.).**

    Use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance is prohibited.

17. **The Farmland Protection Policy Act (7 U.S.C. §§ 4201–4209).**

    Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.

18. **The Noise Control Act of 1972 (42 U.S.C. § 4901 *et seq*.).**

    Federally supported facilities and activities shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.

19. **The Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 *et seq*.).**

    This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.

N. NOTICE AND EVIDENCE OF COMPLIANCE WITH ALL APPLICABLE ENVIRONMENTAL REQUIREMENTS.

The Recipient agrees to promptly notify the Grants Officer in writing of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Project Closeout and final disbursement of Award funds, the Recipient further agrees to provide evidence satisfactory to the Grants Officer that any required environmental remediation has been completed: (1) in compliance with all applicable Federal, State and local regulations; and (2) as set forth in the

applicable lease, finding of suitability to lease ("FOSL"), lease in furtherance of conveyance, quitclaim deed, or other conveyance instrument and any amendments, supplements, or succeeding documents. Compliance with said laws or restrictions shall be included in any contract documents for Project construction. The Recipient must certify compliance before final disbursement of grant funds.

O. MISCELLANEOUS REQUIREMENTS.

1. Criminal and Prohibited Activities.

a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).

b. The False Claims Amendment Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively) provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.

c. The Civil False Claims Act (31 U.S.C. §§ 3729–3733) provides that suits can be brought by the Government, or a person on behalf of the Government, for false claims under Federal assistance programs.

d. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874) prohibits a person or organization engaged in a Federally supported Project from enticing an employee working on the Project from giving up a part of his or her compensation under an employment contract. The Copeland "Anti-Kickback" Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

2. Foreign Travel.

a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.

b. The Fly America Act requires Federal travelers and others performing U.S. Government financed air travel to use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable or when use of U.S. flag air carrier service will not accomplish the agency's mission.

c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral and multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow Federally funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple Open Skies Agreements currently

in effect. For more information about the current bilateral and multilateral agreements, visit the General Services Administration ("GSA") website at http://www.gsa.gov/portal/content/103191. Information on the Open Skies Agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website at http://www.state.gov/e/eeb/tra/.

d. If a foreign air carrier is anticipated to be used for any portion of travel under this Award, the Recipient must receive prior approval from the Grants Officer. When requesting such approval, the Recipient must provide a justification in accordance with the guidance provided by 41 CFR § 301-10.142, which requires the Recipient to provide the Grants Officer with the following: (i) his or her name; (ii) dates of travel; (iii) the origin and destination of travel; (iv) a detailed itinerary of travel; (v) the name of the air carrier and flight number for each leg of the trip; and (vi) a statement explaining why the Recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in disallowance of any transportation costs for which any Recipient improperly used a foreign air carrier.

3. American-Made Equipment and Products.

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.

4. Intellectual Property Rights.

a. **General.** The rights to any work produced or purchased under this Award are determined by 2 CFR § 200.315 ("Intangible property"). The Recipient owns any work produced or purchased under a Federal award subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes. In accordance with 2 CFR § 200.315(d), the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award and authorize others to receive, reproduce, publish or otherwise use such data for Federal purposes.

b. **Inventions.** Unless otherwise provided by law, the rights to any invention made by a Recipient under this Award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified at 35 U.S.C. § 200 *et seq*., except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail at 37 CFR part 401 and, in particular, in the standard patent rights clause at 37 CFR § 401.14, which is hereby incorporated by reference into this Award.

i. Ownership.

(1) *Recipient.* The Recipient has the right to elect to retain title to any invention it makes (conceived or first actually reduced to practice) or that is made by its employees. A Recipient that is a nonprofit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an

invention without the permission of DOC unless that assignment is to a patent management organization (*e.g.*, a university's Research Foundation). The Recipient's ownership rights are subject to the Government's nonexclusive, nontransferrable, irrevocable, paid-up license and other rights.

(2) *Department.* If the Recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty-free, nonexclusive, revocable license for the Recipient. DOC owns any invention made solely by its employees, but may license to the Recipient in accordance with the procedures in 37 CFR part 404.

(3) *Inventor/Employee.* If neither the Recipient nor DOC is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the DOC, may allow the inventor/employee to retain ownership of the invention subject to certain restrictions as described at 37 CFR § 401.9.

(4) *Joint Inventions.* Inventions made jointly by a Recipient and a DOC employee will be owned jointly by the Recipient and DOC. However, DOC may transfer or license its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the Recipient is willing to patent and license the invention, usually in exchange for a share of "net" royalties based on the number of inventors (*e.g.*, 50-50 if there is one Recipient inventor and one DOC employee inventor). The agreement will be prepared by DOC and may include other provisions, such as a royalty-free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.

ii. *Responsibilities – iEdison.* The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are described below. The Recipient is expected to comply with all requirements of the standard patent rights clause and 37 CFR part 401 and is required to submit its disclosures, elections, and requests for waivers from any requirement for substantial U.S. manufacture electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. The Recipient may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

c. **Patent Notification Procedures**. Pursuant to Executive Order 12889 (58 *Fed. Reg.* 69681, 1993), DOC is required to notify the owner of any valid patent covering technology whenever DOC or a Recipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer. This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the Award.

d. **Copyright**. A Recipient may copyright any work produced under this Award subject to DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish or

otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DOC and Recipient employees may be copyrighted, but only the part of such works authored by the Recipient is protectable in the United States because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the Recipient to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking the primary dissemination of the work.

5. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

6. Research Involving Human Subjects.

a. All proposed research involving human subjects must be conducted in accordance with 15 CFR part 27 ("Protection of Human Subjects"). No research involving human subjects is permitted under this Award unless expressly authorized by special award condition or otherwise authorized in writing by the Grants Officer.

b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

c. DOC regulations at 15 CFR part 27 require that the Recipient maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this Project, the Recipient shall submit appropriate documentation to the Project Officer for approval. This documentation may include:

   i. Documentation establishing approval of the Project by an institutional review board ("IRB") approved for Federal-wide use under Department of Health and Human Services guidelines (*see* 15 CFR § 27.103);

   ii. Documentation to support an exemption for the Project under 15 CFR § 27.101(b); or

   iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.

d. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 CFR § 27.118, if research involving human subjects is proposed after an award is made, the Recipient must contact the Grants Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the Project for protocol or instrument development related to human subjects research.

7. Federal Employee Expenses.

Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any Federal employee. Use of Award funds (Federal or non-Federal) or the Recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from Recipients or applicants regardless of the source.

8. Minority Serving Institutions Initiative.

Pursuant to Executive Orders 13555 ("White House Initiative on Educational Excellence for Hispanics") (75 *Fed. Reg.* 65417, 2010), 13592 ("Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities") (76 *Fed. Reg.* 76603, 2011), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities") (75 *Fed. Reg*. 9749, 2010), DOC is strongly committed to broadening the participation of minority serving institutions ("MSIs") in its financial assistance programs.

DOC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website at https://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.

9. Research Misconduct.

The DOC adopts, and applies to financial assistance for research, the Federal Policy on Research Misconduct ("Federal Policy") issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 *Fed. Reg*. 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Recipients must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the result of any investigation. DOC may take appropriate administrative or enforcement action at any time under the Award, up to and including Award termination and possible suspension or debarment, and referral to the DOC Office of the Inspector General ("OIG"), the U.S. Department of Justice, or other appropriate investigative body.

10. Publications, Videos, and Acknowledgment of Sponsorship.

a. Publication of results or findings in appropriate professional journals and production of video or other media are encouraged as important methods of recording and reporting results of Federally funded projects, such as scientific research, and expanding access to Federally funded projects.

b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to their EDA Project Officer.

c. When releasing information related to a funded Project, Recipients must include a statement that the Project or effort undertaken was or is sponsored by DOC.

d. Recipients are responsible for ensuring that every publication of material based on, developed under, or produced under this Award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:

> *This [report/video] was prepared by [Recipient name] using Federal funds under award [number] from the Economic Development Administration, U.S. Department of Commerce.*
>
> *The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the Economic Development Administration or the U.S. Department of Commerce.*

11. Care and Use of Live Vertebrate Animals.

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 *et seq*.) ("Animal acquisition, transport, care, handling, and use in projects"), and the implementing regulations at 9 CFR parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq*.); the Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq*.) ("Taking possession, transport, purchase, sale, export or import of wildlife and plants"); the Non-indigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq*.) ("Ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release"); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC award unless authorized by the Grants Officer.

12. Homeland Security Presidential Directive 12.

If performance under the Award requires Recipient personnel to have routine access to Federally controlled facilities and/or Federally controlled information systems (for purposes of this condition, "routine access" is defined as more than 180 business days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with the U.S. Citizenship and Immigration Services ("USCIS") Verification Division, a component of the Department of Homeland Security ("DHS"), to ensure that the individual is in a lawful immigration status and that he or she is eligible for employment within the U.S. Any items or services delivered under this Award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, "Policy for a Common Identification Standard for Federal Employees and

Contractors," Federal Information Processing Standards Publication ("FIPS PUB") Number 201, and OMB Memorandum M-05-24. The Recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this Award comply with the requirements contained in this term. The Grants Officer may delay final payment under this Award if a subrecipient or contractor fails to comply with the requirements listed below. The Recipient shall insert the following term in all subawards and contracts when the subrecipient or contractor is required to have routine physical access to a Federally controlled facility or routine access to a Federally controlled information system:

> *The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally controlled facility or routine access to a Federally controlled information system.*
>
> *The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.*

13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.

a. This term applies to the extent that this Award involves access to export-controlled items.

b. In performing under this Award, the Recipient may gain access to export-controlled information or technology. The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including the deemed exports and reexports provisions of the Export Administration Regulations ("EAR"). The Recipient shall establish and maintain throughout performance of this Award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

c. Definitions.

   i. *Export-controlled items*. Items (commodities, software, or technology) that are subject to the EAR (15 CFR §§ 730–774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items—that is, items with a military and commercial application.

   ii. *Deemed export/reexport*. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange

of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.

d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, executive orders, or regulations, including the EAR.

e. As applicable, Recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.

f. Nothing in the Terms and Conditions of this Award is intended to change, supersede or waive the requirements of applicable Federal laws, executive orders, or regulations.

g. The Recipient shall include this subsection entitled "Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations," including this subparagraph g, in all lower-tier transactions (subawards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

14. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as Amended, and the Implementing Regulations at 2 CFR part 175.

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the Recipient engages in certain activities related to trafficking in persons. The Department hereby incorporates the following Award term required by 2 CFR § 175.15(b). *See* http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf

a. *Provisions applicable to a Recipient that is a private entity.*

i. The Recipient, its employees, subrecipients under this Award, and subrecipients' employees may not:

(1) Engage in severe forms of trafficking in persons during the period of time that the Award is in effect;

(2) Procure a commercial sex act during the period of time that the Award is in effect; or

(3) Use forced labor in the performance of the Award or subawards under the Award.

ii. EDA, as the Federal awarding agency, may unilaterally terminate this Award, without penalty, if the Recipient or a subrecipient that is a private entity:

(1) Is determined to have violated a prohibition in paragraph a.i of this Award term; or

(2) Has an employee who is determined by the Grants Officer to have violated a prohibition in paragraph a.i of this Award term through conduct that is either: (A) associated with performance under this Award; or (B) imputed to the Recipient or a subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided at 2 CFR part 180 ("OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)") as

implemented by DOC at 2 CFR part 1326 ("Nonprocurement Debarment and Suspension").

b. *Provision applicable to a Recipient other than a private entity*. EDA, as the Federal awarding agency, may unilaterally terminate this Award, without penalty, if a subrecipient that is a private entity:

   i. Is determined to have violated an applicable prohibition in paragraph a.i of this Award term; or

   ii. Has an employee who is determined by the Grants Officer to have violated an applicable prohibition in paragraph a.i of this Award term through conduct that is either:

      (1) Associated with performance under this Award; or

      (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided at 2 CFR part 180 ("OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)"), as implemented by DOC at 2 CFR part 1326 ("Nonprocurement Debarment and Suspension").

c. *Provisions applicable to any Recipient*.

   i. The Recipient must inform EDA immediately of any information it receives from any source alleging a violation of a prohibition in paragraph a.i of this Award term.

   ii. EDA's right to terminate this Award unilaterally, as described in paragraph a.ii or b of this section:

      (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 ("TVPA"), as amended (22 U.S.C. § 7104(g)), and

      (2) Is in addition to all other remedies for noncompliance that are available to EDA under this Award.

   iii. The Recipient must include the requirements of paragraph a.i of this Award term in any subaward made to a private entity.

d. *Definitions*. For purposes of this Award term:

   i. "Employee" means either:

      (1) An individual employed by the Recipient or a subrecipient who is engaged in the performance of the Project under this Award; or

      (2) Another person engaged in the performance of the Project under this Award and not compensated by the Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward Matching Share requirements.

   ii. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

   iii. "Private entity":

(1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined at 2 CFR § 175.25;

(2) Includes: (A) a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of "Indian tribe" at 2 CFR § 175.25(b); and (B) a for-profit organization.

iv. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given in section 103 of the TVPA, as amended (22 U.S.C. § 7102).

15. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 U.S.C. § 6101 Note), as Amended by the Government Funding Transparency Act of 2008 (Pub. L. No. 110-252).

a. **Searchable Website Requirements**. The Federal Funding Accountability and Transparency Act of 2006 ("FFATA" or "Transparency Act") requires that information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. To meet these requirements, Recipients and subrecipients must include the following data elements in their Application:

i. Name of entity receiving Award;

ii. Award amount;

iii. Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive Award title;

iv. Location of entity and primary location of performance (city, State, Congressional District, and country); and

v. Unique identifier of entity.

See also 2 CFR § 200.211 ("Public access to Federal award information").

b. **Subaward and Executive Compensation Data Reporting Requirements**. A Recipient awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010, other than those funded by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) ("Recovery Act"), are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The Recipient is required to file a FFATA subaward report by the end of the month following the month in which the Recipient awards any subgrant greater than or equal to $25,000. *See* Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. § 6101 note). The reporting requirements are located in Appendix A of 2 CFR part 170 and are available at https://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part170.pdf.

i. Reporting of first-tier subawards.

(1) Applicability. Unless exempt as provided in paragraph b.iv of this Award term, the Recipient must report each action that obligates $25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the

Recovery Act, Pub. L. No. 111-5) for a subaward to an entity (*see* definitions in paragraph b.v of this Award term).

(2) Where and when to report.

(a) The Recipient must report each obligating action described in paragraph b.i(1) of this Award term to http://www.fsrs.gov.

(b) For subaward information, the Recipient must 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, 2015, the obligation must be reported by no later than December 31, 2015.)

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

ii. Reporting total compensation of Recipient executives.

(1) Applicability and what to report. The Recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if:

(a) The total Federal funding authorized to date under this Award is $25,000 or more;

(b) In the preceding fiscal year, the Recipient received:

(i) 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

(ii) $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

(c) 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. Securities and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

(2) Where and when to report. The Recipient must report executive total compensation described in paragraph b.ii of this Award term:

(a) As part of its registration profile at http://www.ccr.gov.

(b) By the end of the month following the month in which this Award is made, and annually thereafter.

iii. Reporting total compensation of subrecipient executives.

(1) Applicability and what to report. Unless the subrecipient is exempt as provided in paragraph b.iv of this Award term, each first-tier subrecipient under this Award 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:

(a) In the subrecipient's preceding fiscal year, the subrecipient received:

(i) 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

(ii) $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

(b) 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. Securities and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

See also 2 CFR § 200.300(b) ("Statutory and national policy requirements").

(2) Where and when to report. The subrecipient must report its executive total compensation described in paragraph b.iii of this Award term:

(a) To the Recipient.

(b) By the end of the month following the month during which the subaward is made. 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), the required compensation information of the subrecipient must be reported by November 30 of that year.

iv. Exemptions. If, in the previous tax year, the Recipient had gross income, from all sources, under $300,000, it is exempt from the requirements to report:

(1) Subawards, and

(2) The total compensation of the five most highly compensated executives of any subrecipient.

v. Definitions. For purposes of this Award term:

(1) "Entity" means all of the following, as defined at 2 CFR part 25:

(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 Recipient.

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

(3) "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 the Recipient received this Award and that the Recipient awards to an eligible subrecipient.

(b) The term does not include the Recipient's procurement of property and services needed to carry out the Project or program (for further explanation, *see* 2 CFR § 200.330).

(c) A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.

(4) "Subrecipient" means an entity that:

(a) Receives a subaward from the Recipient under this Award; and

(b) Is accountable to the Recipient 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)):

(a) Salary and bonus.

(b) 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), Share Based Payments.

(c) 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.

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

(e) Above-market earnings on deferred compensation which is not tax-qualified.

(f) 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.

c. **Central Contractor Registration ("CCR") and Universal Identifier Requirements.** In accordance with 2 CFR part 25, the Recipient must obtain a Data Universal Numbering System ("DUNS") number and maintain an active registration in the CCR database. In addition, the Recipient must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the Recipient. The requirements are located in Appendix A of 2 CFR part 25 and are available at http://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part25.pdf.

i. Requirement for CCR. Unless exempted from this requirement under 2 CFR § 25.110, the Recipient must maintain the currency of its information in the

CCR until it submits the final financial report required under this Award or receives the final payment, whichever is later. This requires that the Recipient review and update the information at least annually after the initial registration, and more frequently if required by changes in its information or another Award term.

ii. Requirement for DUNS Numbers. If authorized to make subawards under this Award, the Recipient:

(1) Must notify potential subrecipients that no entity (*see* definition in paragraph b.v of this Award term) may receive a subaward from the Recipient unless the entity has provided its DUNS number to the Recipient.

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

iii. 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 System for Award Management website (currently at https://www.sam.gov/portal/public/SAM/).

(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 Recipient.

(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 the Recipient received this Award and that the Recipient awards to an eligible subrecipient.

(b) The term does not include the Recipient's procurement of property and services needed to carry out the Project or program (for further explanation, *see* 2 CFR § 200.330).

(c) A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.

(5) "Subrecipient" means an entity that:

(a) Receives a subaward from the Recipient under this Award; and

(b) Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

See also 2 CFR § 200.300(b) ("Statutory and national policy requirements").

16. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown.

This term sets forth initial guidance that will be implemented for Federal financial assistance awards in the event of a lapse in appropriations, or a Government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

a. Unless there is an actual rescission of funds for specific grant obligations, Recipients under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the Award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

b. All Award actions will be delayed during a Government shutdown; if it appears that a Recipient's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible Government shutdown, the Project Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise the Recipient that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, Recipients whose ability to withdraw funds is subject to prior agency approval, which in general are Recipients that have been designated high risk, Recipients under construction awards, and other Recipients limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment ("ASAP") account only if agency approval is given and coded into ASAP prior to any Government shutdown or closure. This limitation may not be lifted during a Government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the Government reopens.

c. The ASAP system should remain operational during a Government shutdown. Recipients that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a Government shutdown and advanced funds held for more than 30 days will have to be returned with interest.

APPENDIX

The following reference materials and forms are available online:

1. 2 CFR part 200, *"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"*
2. 2 CFR part 1326, "*Nonprocurement Debarment and Suspension*"
3. 13 CFR Chapter III (EDA's regulations)
4. 15 CFR part 4, "*Disclosure of Government Information*"
5. 15 CFR part 27, "*Protection of Human Subjects*"
6. 15 CFR part 28, "*New Restrictions on Lobbying*"
7. 15 CFR part 29, "*Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)*"
8. 48 CFR part 31, "*Contract Cost Principles and Procedures*"
9. Code of Federal Regulations (CFR): Government Printing Office's Federal Digital System (FDSYS) at https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR
10. EDA's regulations: http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR); search for Title 13, Chapter III after selecting the relevant year
11. OMB Circulars: www.whitehouse.gov/omb/circulars/index.html
12. Davis-Bacon wage rate determinations: http://www.wdol.gov/dba.aspx

Governmentwide and DOC-Specific Forms:

1. Form CD-281, "Report of Government Property in Possession of Contractor"
2. Form CD-450, "Financial Assistance Award"
3. Form CD-451, "Amendment to Financial Assistance Award"
4. Form SF-425, "Federal Financial Report"
5. Form SF-428, "Tangible Personal Property"
6. Form SF-429, "Real Property Status Report"
7. Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"
8. Form SF-272, "Federal Cash Transaction Report"
9. Form SF-LLL, "Disclosure of Lobbying Activities"

Commerce Department ("CD") forms:
http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm

Governmentwide Standard Forms ("SF"): https://www.whitehouse.gov/omb/grants_forms