

**VERMONT  
CLEAN ENERGY DEVELOPMENT  
FUND**

**LOAN PROGRAM  
APPLICATION  
INSTRUCTIONS**

# CEDF LOAN PROGRAM

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## GUIDELINES

The CEDF will fund a wide variety of clean and/or renewable energy technologies, including but not limited to the following: solar; wind energy; farm, landfill, and sewer methane recovery; combined heat & power (CHP) systems; thermal and geothermal generation systems; hydroelectric systems, and emerging energy-efficient technologies. All electric-generation projects must be grid-connected. The CEDF will make loans to companies that meet the Fund's objectives and advance the overall goals of the Fund as more specifically set forth in 10 V.S.A § 6523 and the CEDF Strategic Plan in the section entitled "Potential Funding Areas." Eligible borrowing entities may include individuals, sole proprietorships, municipalities, partnerships (both general and limited), limited liability companies, nonprofit corporations, Subchapter S corporations, and foreign corporations with Vermont subsidiaries/affiliates.

Loan funds may be used to purchase fixed assets, including real property, machinery, and equipment, and for working capital, including but not limited to the financing of inventory and accounts receivables. Loan funds may not be used to fund feasibility studies, although certain research and development and engineering activities may qualify for funding. All loan funds must be used for activities or assets directly related to the project. At least 10% of a project must be financed with equity. CEDF loans may fund no more than 90% of the cost of a project. Projects leveraging other funding sources such that the percentage of CEDF funding can be minimized will be given priority for funding. The CEDF's loans may not exceed \$500,000 per project; minimum loan amount is \$50,000.

The normal loan term is 10 years with a 15-year amortization for structure and real estate loans, and a maximum of a 7-year term and amortization for machinery/equipment loans. Term working capital loans will generally be made for a three-year term, although there may be flexibility depending on the nature of the project and the assets being financed. In accordance with normal lending practices, the CEDF collateralizes its loans with mortgages on real estate and/or security interests in machinery and equipment. Personal guarantees of principals may be required.

Completed applications for financing are due quarterly: July 1, October 1, January 1, and April 1. The review period for complete applications may be up to 60 days. If applications are not complete or unforeseen circumstances arise, the review period could be longer. The CEDF Board must approve all loans. Applicants are advised to discuss their proposed project with the CEDF Manager prior to submitting an application. A written commitment from all other lenders or guarantors involved

in the project must be included in the application. A Processing Fee of 1% of the CEDF loan amount (capped at \$1,500) is payable when the CEDF's loan commitment letter is executed and returned by the applicant.

Principals of the applicant may be asked to be in attendance to answer questions when the CEDF Board considers the application. Meetings are open to the public, subject to certain exceptions.

All loans made with American Recovery and Reinvestment Act (ARRA) funds, which are the primary source of CEDF loan funds in FY10-11, must adhere to federal requirements, including a preliminary National Environmental Policy Act (NEPA) review, if required (checklist may be viewed at <https://www.eere-pmc.energy.gov/NEPA.asp>), auditing, and reporting. A list of potential reporting requirements and funding limitations may be found at [http://apps1.eere.energy.gov/wip/pdfs/sep\\_arra\\_foa.pdf](http://apps1.eere.energy.gov/wip/pdfs/sep_arra_foa.pdf) in section 10.3A, as well as at <http://edocket.access.gpo.gov/2009/pdf/E9-9073.pdf> (see especially for Buy American and Davis-Bacon wage requirements), and in the ARRA terms and conditions appended to the end of this document.

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## LOAN RATES

Interest rate set by Board; currently fixed at 2%

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## MAIL APPLICATIONS TO:

Anne Margolis  
Clean Energy Development Fund Manager  
Vermont Dept of Public Service  
112 State Street  
Montpelier VT 05620-2601

For additional information contact Anne Margolis at:

Tel: 802-828-4017  
Fax: 802-828-2342  
Email: [anne.margolis@state.vt.us](mailto:anne.margolis@state.vt.us)

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The CEDF loan application consists of 11 sections. Please submit the following, starting with a summary page.

**SECTIONS 1-3 MUST BE SUBMITTED ELECTRONICALLY AS WELL AS WITH THE HARD COPY OF THE COMPLETED APPLICATION.**

## 1. SUMMARY PAGE

- a. Name of applicant, address and telephone number, and email
- b. Loan amount requested
- c. Brief project description
- d. Name, title and telephone number of individuals who will be the primary contact with CEDF
- e. Applicant Federal Identification Number
- f. Applicant Vermont Business Account Number
- g. Applicant Federal DUNS number, if available (required for federal funds; see <http://www.dnb.com/us/>.)
- h. Signature and title of applicant; date of application

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Following the summary page, your application must include the following information:

## 2. PRINCIPALS

Personal resumés (including Social Security numbers) of all principals and/or officers, outlining education and employment history, particularly as it pertains to the present project. Include title and percent of ownership of each principal.

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## 3. PROJECT DESCRIPTION

Provide a description of the project for which financing is requested. This exhibit should include, at minimum:

- a. Type of clean or renewable energy technology proposed;
- b. For electric-generation projects:
  1. Maximum installed generator capacity (kW; for solar, use the DC rating):
  2. Expected actual maximum capacity (kW; for solar, use the AC rating):
  3. Projected Annual kWh:
  4. Capacity factor:
  5. Fuel Type:
- c. For thermal-only and CHP projects, thermal capacity in MMBTU:
  1. Fuel type:
  2. Maximum heat delivery rate (Btu/hour):
  3. Expected heat delivery rate (Btu/hour):
  4. Expected annual Btus delivered:
  5. Capacity factor:
  6. Estimated CO<sub>2</sub> emission rate (in lbs/MMBtu of heat input):

7. Thermal source this project will displace (e.g., oil-fueled boiler) and an estimate of the CO<sub>2</sub> emission rate (lbs/mmBtu of heat input) of the displaced thermal source:
  - d. For geothermal projects:
    1. Describe your system (i.e., open loop/closed loop; water source/ground source; if water source, ground water/surface water):
    2. Describe the length and depth of circulating loops:
    3. Maximum heating/cooling capacity of heat pump (tons):
    4. Ratio of equipment cost to installation cost:
    5. Is the system Energy Star rated?
    6. Has soil conductivity been assessed, and if so, what are the values?
    7. Expected annual Btu of heating/cooling delivered:
    8. Expected annual kWh consumed:
  - e. For emerging energy-efficient technologies projects and any project incorporating energy efficiency:
    1. Efficiency rating of installed equipment (if applicable):
    2. Efficiency of fuel consumption (if applicable):
    3. Efficiency measures already taken:
    4. Efficiency measures to be taken:
    5. Expected annual energy savings (kWh or Btu):
    6. Amount of greenhouse gases reduced (CO<sub>2</sub> equivalents):
    7. Amount of criteria air pollutants reduced (tons):
  - f. Detailed budget for project costs to show sources and uses of all funds;
  - g. Description of how the project will be operated and maintained;
  - h. Identification of key personnel who will be involved with the installation or operation of the project by name and title with a description of their qualifications and experience. Subcontractors must be listed, including the firm name and address, contact person, and complete description of work to be subcontracted. Include descriptive information concerning subcontractor's organization and abilities;
  - i. Description of the specific environmental and societal benefits created through support of the project, such as: the reduction in carbon dioxide and other greenhouse gas emissions and air pollutants; and reduction of fossil fuel;
  - j. A description of any land or buildings to be purchased with the proceeds of the loan;
  - k. A description of any machinery or equipment to be purchased with the proceeds of the loan;
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#### **4. BUSINESS PLAN**

The Business Plan should include, but need not be limited to, a discussion of the following elements, if applicable to your business. If other elements are more relevant, please discuss those:

- a. Narrative of business or corporate history
  - b. Current/proposed business operations
  - c. Business/industry environment
  - d. Marketing plan
  - e. Production or operations plan
  - f. Management structure, including key personnel and their functions
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#### **5. FINANCIAL PLAN**

Provide detailed historical and projected financial information, including:

- a. Preferably CPA-prepared financial statements for the past three years, including income statements, balance sheets, and sources and uses of funds and associated footnotes. If financial statements are unavailable, signed tax returns may suffice;
  - b. If the applicant is a subsidiary or is closely affiliated with another corporation, supply financial statements for the parent corporation or affiliate for the last three years;
  - c. Projected income and cash flow statements and balance sheets for the present fiscal year and three years forward. Start-up or development-stage businesses should also provide a monthly cash flow statement for the first year or until the business is projected to reach breakeven. List all material assumptions included in the projections;
  - d. Personal financial statements for all principals with ownership equal to or greater than 20% of the business;
  - e. Sources and terms of funds to be borrowed for working capital and for the planned purchase of other assets not included in the CEDF project;
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#### **6. WORK PLAN & PROJECT TIMETABLE**

Describe in narrative form the plan for accomplishing the work required to complete the project, plan for project oversight, quality assurance measures, and financial management. Include a list of all permitting requirements for the project and whether any of the permits have been obtained.

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#### **7. JOB CREATION**

In an attempt to gather more in-depth and accurate information on job creation, we request that the applicant provide certain information to assist CEDF in ascertaining its impact on and value to the Vermont economy. We understand that projected employment data is difficult to predict and that future employment data may not meet projections, but we request that the applicant make a reasonable estimate of any future employment opportunities created by the project, or the ability of the project to preserve existing jobs.

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#### **8. LENDER COMMITMENTS**

Provide letters of commitment from all other participating lenders or guarantors, including banks and other private and/or public institutions or entities. Include relevant resolutions of boards or committees, executed by appropriate individuals.

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#### **9. BANKING RELATIONSHIPS**

Provide a list of all loan obligations that the business currently has outstanding, and for each loan indicate: the original and current principal balance; the type of loan and collateral pledged; the terms and conditions thereof; and the name and telephone number of the loan officer.

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#### **10. BANKRUPTCY/LITIGATION**

Provide a brief written description of the details of any bankruptcy, receivership, compromises with creditors, any pending litigation, or criminal charges or convictions other than minor motor vehicle violations, against the applicant, company, officers, directors, or principal stockholders. If none of these circumstances pertain, include a statement to that effect.

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#### **11. CERTIFICATE OF AUTHORITY TO DO BUSINESS IN VERMONT**

If applicant is an out-of-state domiciled company, include Certificate of Authority to do Business in Vermont.

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## PROJECT EVALUATION CRITERIA

In addition to a credit underwriting process, the following project evaluation criteria may be considered in the approval of loans. Any additional criteria deemed relevant may also be considered.

- **Financial Leverage**

To maximize use of the available funds, the degree of financial leverage (through funding obtained from the federal government, private investors, companies and consumers, etc.) will be a component of investment decisions.

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- **Energy Available to Vermont Ratepayers**

Programs and projects will be evaluated in terms of the degree to which they are likely to contribute to an increase in the renewable energy generating or CHP capacity available to Vermont consumers.

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- **Economic Impact**

The extent of the additional economic value created by support of a project/program will be evaluated. The creation of well-paying jobs is also fundamental to CEDF's mission. Evaluation of the number and quality of jobs the applicant expects to create or retain is crucial in the CEDF's evaluation of a project.

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- **Strength of Management Team**

In evaluating projects or programs, consideration will be given to the strength, experience, and qualifications of the management team.

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- **Reductions in Greenhouse Gas Emissions**

The Fund will consider the degree to which investments contribute to a reduction in carbon dioxide emissions and other greenhouse gas and air pollutants.

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- **Market Impact**

The degree to which the project increases renewable energy capacity, reduces barriers to market entry, and creates new markets in Vermont.

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- **Public Benefit**

Projects will be evaluated in regards to the benefit to Vermont consumers and/or system benefits, and in meeting state renewable energy objectives and policies. Projects that benefit public buildings and/or will be located in constrained areas may receive preference in the evaluation process.

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- **Financial Need**

The Fund will consider the degree to which CEDF funding provides the crucial component toward project completion, the degree to which the applicant requires assistance, and the degree to which the applicant has explored any other available sources of funding.

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- **Energy Efficiency**

Installations at residential and commercial buildings must show that the building has met required energy codes. Additional consideration may also be given for high-performance buildings or above-code energy efficiency improvements.

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- **Fit with ARRA Goals**

The Fund will consider the degree to which projects meet the goals of ARRA, including job preservation and creation, reductions in reliance on imported energy, reductions in the impacts of energy production and use on the environment, improvement in reliability of electricity and fuel supply and the delivery of energy services, and timely completion.

## **APPLICANT CERTIFICATION**

I / We hereby certify that the information contained in our application for funding from the Vermont Clean Energy Development Fund dated \_\_\_\_\_ is complete and accurate to the best of my/our knowledge, and authorize all inquiries deemed necessary to verify the accuracy of the information I/we have and will provide in connection therewith.

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Applicant

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Date

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Applicant

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Date

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Applicant

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Date

**Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009 (Mar 2009)**

[Prescription: This clause must be included in all grants, cooperative agreements and TIAs (new or amended) when funds appropriated under the Recovery Act are obligated to the agreement.]

Preamble

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

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

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

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

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

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as

Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

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

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

### Special Provisions

#### A. Flow Down Requirement

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

#### B. Segregation of Costs

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

#### C. Prohibition on Use of Funds

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

#### D. Wage Rates

All laborers and mechanics employed by recipients, subrecipients and contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance

with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code.

#### E. Reporting Requirements for Recipients

Not later than 10 days after the end of each calendar quarter, each recipient shall submit a report to the Contractor Officer or to an address or website designated by the Contracting Officer that contains:

- The total amount of American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, covered funds received from that agency;
- The amount of American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, covered funds received that were expended or obligated to projects or activities;
- A detailed list of all projects or activities for which American Recovery and Reinvestment Act of 2009, Pub L. 111-5, covered funds were expended or obligated including:
  - Name of project or activity
  - Agreement number
  - Description of project or activity
  - Evaluation of the completion status of project or activity
  - Estimate of number of jobs created and retained by project or activity in the manner and form prescribed
  - Infrastructure investments made by State and local governments, purpose, total cost, rationale of agency for funding infrastructure investment, name of agency contact.
  - Information on subgrants awarded by recipient to include data elements required to comply with the Federal Accountability and Transparency Act of 2006 (Pub. L. 109-282).

See the Reporting Requirements Checklist for the ARRA-Performance Progress Report and Instructions.

This information shall be reported to and published on the Internet at [www.Recovery.gov](http://www.Recovery.gov).

Recipients required to report must register with the Central Contractor Registration (CCR) database. Recipient shall ensure that all first-tier subrecipients have a DUNS number and are registered in the CCR no later than the date the first report is due under paragraph F above.

Failure to comply with this reporting requirement may result in termination of that part of the award funded by the Recovery Act.

#### F. Access to Records

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

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

#### G. Publication

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

##### Notice of Restriction on Disclosure and Use of Data

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

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

#### H. Protecting State and Local Government and Contractor Whistleblowers.

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

**Prohibition on Reprisals:** An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may

not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

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

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

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

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

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

[If the award will have Recovery Act and non-Recovery Act funds, reimbursement costs must be done by receipt of an SF-270, Request for Advance or Reimbursement, through the Automated Clearing House and VIPERS. Include the provision below to require the Recipient to distinguish between the funds.]

#### I. Request for Reimbursement

Recipients must provide information with its submission of the SF-270, Request for Advance or Reimbursement, to identify the portion of the request that is associated with Recovery Act projects.

#### J. False Claims Act

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

#### K. Information in supporting of Recovery Act Reporting

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

#### L. Availability of Funds

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

[Include Buy American if construction, alteration, maintenance, or repair of a public building or public work will be funding under this award.]

#### Buy American

##### (a) Definitions.

The following definitions apply to terms used in Section 1605 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (“Recovery Act”):

“Building or work” means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating,

clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not “building” or “work” within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Steel,” as used in this subpart, means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. “Recovery funds” means any funds that are made available from appropriations made under this Act.

“United States” means the 50 States, the District of Columbia, and outlying areas including:

- (1) Commonwealths.
  - (i) Puerto Rico.
  - (ii) The Northern Mariana Islands;
- (2) Territories.
  - (i) American Samoa.
  - (ii) Guam.
  - (iii) U.S. Virgin Islands; and
- (3) Minor outlying islands.
  - (i) Baker Island.
  - (ii) Howland Island.
  - (iii) Jarvis Island.
  - (iv) Johnston Atoll.
  - (v) Kingman Reef.
  - (vi) Midway Islands.
  - (vii) Navassa Island.
  - (viii) Palmyra Atoll.
  - (ix) Wake Atoll.

(b) Buy American Requirement. None of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Public Law 111-5

(“Recovery Act”) may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless—

- (1) The public building or public work is located in the United States; and
- (2) All of the iron, steel, and other manufactured goods used as material in the project are produced or manufactured in the United States. Production of the iron or steel in the United States requires melting in the United States.

(c) Exceptions to Buy American Requirement. A recipient may request a waiver from the Buy American Requirement when it believes one of the following exceptions applies in a particular case:

- (1) applying the Buy America Requirement would be inconsistent with the public interest;
- (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(d) Any waiver request from the recipient to use foreign construction material must be submitted to the head of the Federal agency and shall include adequate information for Government evaluation of the request, including—

- (1) A description of the foreign and domestic construction materials;
- (2) Unit of measure;
- (3) Quantity;
- (4) Price;
- (5) Time of delivery or availability;
- (6) Location of the construction project;
- (7) Name and address of the proposed supplier; and
- (8) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (c) of this award term.

(e) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table as follows with any applicable supporting information:

**FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON**

<b>Construction Material Description</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Price (Dollars)*</b>
<i>Item 1:</i>			
<b>Foreign construction material</b>	_____	_____	_____
<b>Domestic construction material</b>	_____	_____	_____
<i>Item 2:</i>			
<b>Foreign construction material</b>	_____	_____	_____
<b>Domestic construction material</b>	_____	_____	_____

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

*[Include other applicable supporting information.]*

*[\* Include all delivery costs to the construction site].*

- (f) The price of construction material shall include all delivery costs to the construction site and any applicable duty.
- (g) Any recipient request for a determination submitted after the award shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the head of the Agency need not make a determination.
- (h) Proof that a waiver has been granted by the head of the Federal agency includes (1) a revised award notice documenting approval to use foreign construction materials and a list of the excepted materials and (2) a final waiver determination that has been published by the head of the Federal agency in the Federal Register.

[Include next 2 paragraphs if award is to a State Government or an Agency.]

#### Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor -- Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution – After adoption of a State legislature’s concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State’s discretion.

#### Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.