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COMMONWEALTH OF MASSACHUSETTS - STANDARD CONTRACT FORM



I. THE COMMONWEALTH STANDARD CONTRACT FORM

This form, to be used for New Contracts and Contract Amendments/Renewals, is jointly issued and published by the [Executive Office for Administration and Finance \(ANF\)](#), the [Office of the Comptroller \(CTR\)](#) and the [Operational Services Division \(OSD\)](#) for use by all Commonwealth Departments. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors should only complete sections marked with a "➔". For Instructions and hyperlinks (italics), please view this form at: www.mass.gov/osc under [Guidance For Vendors - Forms](#) or at www.mass.gov/osd under [OSD Forms](#).

➔ Contractor Legal Name (and d/b/a): Town of Sudbury ➔ Legal Address (from W-9): 322 Concord Rd. Sudbury MA 01776-1850 ➔ Payment Remittance Address (from W-9): 278 Old Sudbury Rd. Sudbury MA ➔ Contract Manager : Maureen Valente, Town Manager ➔ E-Mail Address : valentem@sudbury.ma.us ➔ Phone: 978-639-3381 ➔ Fax: 978-443-0756 ➔ TTY: ➔ State of Incorporation (if a corporation) or "N/A": MA ➔ Vendor Code : VC6000101996 MMARS Object Code : P01	Department MMARS Alpha Code and Name : DOER-ENE Business Mailing Address : 100 Cambridge Street Suite 1020, Boston MA 02114 Billing Address (if different): Contract Manager : Diane Gray E-Mail Address: Diane.Gray@state.ma.us Phone: 617-626-7383 Fax: 617-727-0300 TTY: MMARS Doc ID(s) : RFR/Procurement or Other ID Number (if applicable): PON-ENE-2010-009 Account(s) Funding Contract : 70069803
<p style="text-align: center;"><input checked="" type="checkbox"/> NEW CONTRACT</p> COMPENSATION (Check only one): <input checked="" type="checkbox"/> Total Maximum Obligation of this Contract \$ 141,864.00 <input type="checkbox"/> Rate Contract (Attach details of rate(s) units and any calculations): The following COMMONWEALTH TERMS AND CONDITIONS for this Contract has been executed and filed with CTR (Check only one): <input checked="" type="checkbox"/> Commonwealth Terms And Conditions <input type="checkbox"/> Commonwealth Terms And Conditions For Human And Social Services PROCUREMENT OR EXCEPTION TYPE (Check one option only): <input type="checkbox"/> Single Department Procurement/Single Department User Contract <input type="checkbox"/> Single Department Procurement/Multiple Department User Contract <input type="checkbox"/> Multiple Department Procurement/Limited Department User Contract <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input checked="" type="checkbox"/> Grant (as defined by 815 CMR 2.00) <input type="checkbox"/> Emergency Contract (attach justification) <input type="checkbox"/> Contract Employee (Complete Employment Status Form) <input type="checkbox"/> Collective Purchase (attach OSD approval) <input type="checkbox"/> Legislative/Legal Exemption (attach authorizing language) <input type="checkbox"/> Other (Specify and attach documentation): ANTICIPATED START DATE : _____ (Enter the Date Contract Obligations may begin. Review Certification for Effective Date Below prior to entry.) CONTRACT END DATE : <u>June 30, 2012</u>	<p style="text-align: center;"><input type="checkbox"/> CONTRACT AMENDMENT/RENEWAL</p> ENTER CURRENT CONTRACT START and END DATES (prior to amendment) Current Start Date: _____ Current End Date: _____ COMPENSATION : (Check Either, "No Compensation Change"; "Maximum Obligation" or "Rate change". ATTACH Amended Scope and Budget to support Amendment.) <input type="checkbox"/> NO Compensation Change (Skip to "OTHER" section below and select change) <input type="checkbox"/> Redistribute Budget Line Items (No Maximum Obligation Change) <input type="checkbox"/> Maximum Obligation Change. a) Current Total Contract Maximum Obligation : \$ _____ (Total Contract Maximum Obligation, including all prior amendments). b) Amendment Amount ("+" or "-") : \$ _____ c) NEW TOTAL CONTRACT MAXIMUM OBLIGATION : \$ _____ <input type="checkbox"/> Rate Changes to Rate Contract OTHER : (Check option, explain under "Brief Description" below, and attach documentation.) <input type="checkbox"/> Amend Duration Only (No Compensation or Performance Change) <input type="checkbox"/> Amend Scope of Services/Performance Only (no budget impact.) <input type="checkbox"/> Interim Contract (Temporary Extension to complete new Procurement) <input type="checkbox"/> Other : (Describe Details and Attach documentation): ANTICIPATED START DATE : _____ (Enter the Date Amendment Obligations may begin. Review Certification for Effective Date Below prior to entry.) NEW CONTRACT END DATE : _____
➔ PROMPT PAYMENT DISCOUNTS . Contractor has agreed to the following Prompt Pay Discounts for the listed Payment Issue Dates. See Prompt Payment Discount Policy . ___ % Within 10 Days ___ % Within 15 Days ___ % Within 20 Days ___ % Within 30 Days OR, Check off the following if: <input checked="" type="checkbox"/> Contractor either claims hardship, or chooses not to provide PPD, or compensation is not subject to prompt pay discounts (grants, non-commodity or non-service compensation)	
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE OR REASON FOR AMENDMENT (Reference to attachments is insufficient): This is a grant agreement to provide ARRA (federal) funds in the form of an Energy Efficiency and Conservation Block Grant (EECBG) sub-grant to fund solar PV system and solar thermal system to be provided for the benefit of, and subject to the direction and oversight of, the Grantee as detailed in Attachment A.	
CERTIFICATIONS : Notwithstanding verbal or other representations by the parties, or an earlier Start date listed above, the "Effective Date" of this Contract or Amendment shall be the latest date this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, a later Contract or Amendment Start Date specified above, or the date of any required approvals. By executing this Contract/Amendment, the Contractor makes, under the pains and penalties of perjury, all certifications required under the attached Contractor Certifications , and has provided all required documentation noted with a "➔", or shall provide any required documentation upon request, and the Contractor agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein, including the terms of the applicable Commonwealth Terms and Conditions available at www.mass.gov/osc under Guidance For Vendors - Forms or at www.mass.gov/osd under OSD Forms , the terms of the attached Instructions , the Request for Response (RFR), solicitation (if applicable) or other authorization, the Contractor's response to the RFR or solicitation (if applicable), and any additional negotiated performance or budget provisions. The terms of this Contract shall survive its termination for the purpose of resolving any claim, dispute or other Contract action, or for effectuating any negotiated representations and warranties. THE PARTIES HEREBY ALSO CERTIFY THAT (Check one option only): 1. <input checked="" type="checkbox"/> the Contractor has NOT incurred any obligations triggering a payment obligation for dates <i>prior</i> to the Effective Date of this Contract or Amendment: OR 2. <input type="checkbox"/> any obligations incurred by the Contractor <i>prior</i> to the Effective Date of this Contract or Amendment (for which a payment obligation has been triggered) are intended to be part of this Contract/Amendment and shall be considered a final Settlement and Release of these obligations which are incorporated herein, and upon payment of these obligations, the Contractor forever releases the Commonwealth from any further claims related to these obligations.	
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: ➔ X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) ➔ Print Name: <u>Maureen Valente</u> ➔ Print Title: <u>Town Manager</u>	AUTHORIZING SIGNATURE FOR THE DEPARTMENT: X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>John McMillen</u> Print Title: <u>Fiscal Director</u>

INSTRUCTIONS

The following instructions to the **Standard Contract Form** are provided to assist both Contractors and Commonwealth Departments with the interpretation and completion of the **Standard Contract Form**. These Instructions, including policies, procedures and legal references, are incorporated by reference into the **Standard Contract Form**. The **Standard Contract Form** is the boilerplate contract used by the Commonwealth for commodity and service Contracts, Grants and any other agreements for which another standard boilerplate is not already prescribed by statute, regulation or policy.

The **Standard Contract Form** is not a stand alone contract document but is used as the key document that incorporates the various documents that make up a Commonwealth Contract, which include in the hierarchy of precedence: (1) the applicable [Commonwealth Terms and Conditions](#) or the [Commonwealth Terms and Conditions for Human and Social Services](#) (T&C) (2) this Standard Contract Form, (3) a Request for Response (RFR), other procurement solicitation document, or procurement exception supporting documentation, (4) the Contractor's response to the RFR or other solicitation, or scope of performance and budget for procurement exceptions, and (5) any other non-conflicting negotiated terms and conditions and attachments. Departments may not sign Vendor Contracts but may attach copies of the Contracts, with appropriate redaction of conflicting terms. A Contractor may not condition execution of the Standard Contract Form or the applicable T&C on the Department's signing the Contractor's contract or other contractual form, invoice, or other documents with additional or conflicting contractual terms. Any of these attached terms or documents shall be superseded by the documents in the order of precedence listed above.

Note: Any changes to the official printed language of this form shall be void. This form is designed to have data electronically added, rather than manually completed and table boxes will expand to accommodate text that is required to be added. Departments and Contractors may not alter the format or add fields to the form. The Department and a Contractor may negotiate by attachment, any additional language which clarifies their understanding of, but does not change, the language of the applicable **Commonwealth Terms and Conditions** and this **Standard Contract Form**. Clarifications may fill in the gaps and "spell-out" the understanding of the Department and the Contractor regarding their respective contract responsibilities. Clarifications may not be used to have the effect of negating, modifying, or replacing language in the applicable **Commonwealth Terms and Conditions** or this **Standard Contract Form**. For example, the following are acceptable additional terms: prior written notice periods, types of reports and timing of submission, details of delivery or acceptance of performance, records storage requirements, identifying what items are considered "deliverables" and what items are "contractor materials" that are already copyrighted or owned prior to the Contract, and are being used to complete performance. Ownership can not be conveyed after performance if the Commonwealth has paid for development of a deliverable with just compensation.

Contract Should be Sent and Reviewed Electronically. The **Standard Contract Form** is designed to be used electronically and should be reviewed by Contractors online to ensure access to hyperlinked references. Departments completing the **Standard Contract Form** for execution should enter the information electronically and send the form electronically to the Contractor to ensure timely completion and execution.

Links to policies, procedures and legal references. Text that appears italicized and underlined in the **Standard Contract Form** indicates a "hyperlink" that will link you to an Internet or bookmarked site for the particular reference being cited. Pressing the "Alt" and "F9" keys while in the Microsoft® Word version of this document will display the full text of hyperlinks which can be copied and pasted or typed into your Internet browser address field if you can not connect directly to the Internet by clicking on a hyperlink. Hyperlinks to legal requirements such as statutes and regulations are links to unofficial versions of these documents. While reasonable efforts have been made to assure the accuracy of the data provided, Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. **Please note that not all applicable laws have been cited in this document. Instructions and hyperlinks may be added or changed without notice, so please periodically check this document at: www.mass.gov/osc under [Guidance For Vendors - Forms](#) or at www.mass.gov/osd under [OSD Forms](#) for updates.**

A Department is **NOT** responsible for providing a paper copy of the **Standard Contract Form** Instructions to Bidders or Contractors. The **Standard Contract Form** Instructions are incorporated by reference into the **Standard Contract Form** and do not have to be filed with the completed Contract documents. **Departments and Contractors are responsible for reviewing the **Standard Contract Form** electronically online including the Instructions and hyperlinks.**

Contractor Name (and d/b/a): Enter the full legal name of the Contractor's business as it appears on the Contractor's [W-9](#) Form and the applicable Commonwealth Terms and Conditions. If Contractor also has a "doing business as" (d/b/a) name, both the legal name and the "d/b/a" name must appear in this section. Changes to the Contractor's Legal Name without a [major structural change](#) (such as a merger or consolidation) will require an updated W-9 and Commonwealth Terms and Conditions signed by an Authorized Signatory of the Contractor and filed with CTR. The Department should update the Contract and attachments either at the time of the name change, or when the Contract is next amended. The Department is required to make the necessary changes using a VCM for the VCUST table to update the Contractor's Vendor Code.

Contractor Legal Address: Enter the Legal Address of the Contractor which matches the W-9 filed for this Contractor where all tax reporting forms will be sent. This address must match the legal address the Contractor has on file with the Internal Revenue Service (IRS) and the Department of Revenue (DOR) and must match the 1099 information for the Vendor Code listed for this Contract. Updates to the Legal Address without a [major structural change](#) to the Contractor (such as a buyout, merger, or other change) requires an updated W-9 from an Authorized Signatory of the Contractor, but does not require other contract document changes. The Department is required to make the necessary changes using a VCM for the VCUST table to update the Master and Legal Addresses for the Contractor's Vendor Code.

Contractor Payment Remittance Address: Also enter the "Remittance Address" if payments are to be mailed to a separate mailing address, which must match the remittance address on the W-9 submitted by the Contractor. Unless otherwise specified in the Contract, legal notice sent or received by the Contractor's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract. Updates to the Remittance Addresses require an updated W-9 from an Authorized Signatory of the Contractor, but do not require other contract document changes. The Department is required to make the necessary changes using a VCM for the VCUST table to update the Master and Legal Addresses for the Contractor's Vendor Code.

- **Contractor Major Structural Change.** The Contractor is required to provide the Department with a minimum of 45 days written advance notice of any planned or potential structural change (merger, buyout, acquisition, consolidation). Contract performance may not be automatically assigned to the new entity (since the underlying procurement may be affected) and the Contractor may be required to negotiate continued performance and execute a

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[Contractor Change in Identity Form](#) in lieu of a *Standard Contract Form*. See the [Amendments, Suspensions, and Termination Policy](#) for additional information.

Contractor Contract Manager: Identify the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing contract issues. The Contract Manager is considered "Key Personnel" and may not be changed without the prior approval of the Department. Notice of a change of Contract Manager may be sent in writing by letter, e-mail, or fax to the Department Contract Manager and does not require a formal Amendment. If the Contract is listed on Comm-PASS, the Contract Manager should be listed in the Vendor Section.

Contractor Phone/Fax/TTY/E-Mail Address: Identify the phone, fax and TTY/TTD number(s) and electronic mail (e-mail) address of the Contract Manager. The Contractor is required to ensure that this information is kept current to ensure that the Department can contact the Contractor and provide any notice under the Contract. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract. Notice of a Change of this information may be sent in writing, by e-mail or fax to the Department Contract Manager and does not require a formal Amendment. If the Contract is listed on Comm-PASS, the Contract Manager Information should be listed in the Vendor Section.

State of Incorporation: If Contractor is a [corporation](#), enter the state in which the Contractor is incorporated. If the Contractor is not a corporation enter "N/A".

Contractor Vendor Code: Enter the state accounting system [Vendor Code](#) (also known as the Vendor Customer Number) assigned by the Commonwealth. If a Vendor Code has not been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department must ensure that the Contractor's Vendor Code matches the Vendor Code created on the state accounting system MMARS VCUST table. If the Contractor has a Vendor Code with multiple payment remittance addresses (see the MMARS VEND file), the Department must verify the correct Vendor Code with the Contractor to ensure timely and properly directed payments. See [Vendor/Customer Policy](#). The Contractor's failure to verify the correct Vendor Code will waive the Department's liability for late payment interest for payments sent to the incorrect remittance address. A change in Vendor Code is usually considered a significant Contract Amendment (unless the change involves no major structural change and the underlying procurement is not affected). Changes in Vendor Codes which result in change of Contractors are restricted (see [major structural change](#)).

MMARS Object Code: MMARS is the Massachusetts Management and Accounting Reporting System. This field is entered by the Department and should identify the MMARS Object Code(s) from the [Expenditure Classification Handbook](#) that represent the type of expenditures for this Contract, and is used to match with the MMARS encumbrance transaction. The object code may be changed by the Department without a formal amendment.

Department MMARS Alpha Code and Name: Enter the MMARS Department Alpha code assigned to this Department and the full legal Department name, which must be a Department recognized in the MMARS state accounting system with a [three \(3\) letter MMARS Code](#). A Division within a recognized MMARS Department may not sign contracts or make other obligations, but must have contracts and other obligations signed under the Department recognized in MMARS.

Department Contract Manager: Identify the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an authorized signatory or, at a minimum, an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing contract issues. Notice of a proposed change of a Contract Manager may be sent in writing by letter, e-mail or fax to the Contractor's Contract Manager (with confirmation of actual receipt) and does not require a formal Amendment.

Department Business Mailing Address: Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for written notice under the Contract.

Department Billing Address: Enter the Billing Address if invoices must be sent to a different location. Billing or confirmation of delivery of performance issues should be resolved through the listed Contract Managers.

Department Phone/Fax/TTY/E-Mail Address: Identify the phone, fax and TTY/TTD number(s) and electronic mail (e-mail) address for the Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

MMARS Document ID: Enter the state accounting system (MMARS) encumbrance transaction number associated with this Contract. The same MMARS Document ID should be used as a reference number on all transactions, documentation or other correspondence related to the Contract for audit, Quality Assurance and Records Management purposes. This information can be entered after the Contract is executed. If more than one ID has been used for this Contract or Amendment, identify all that apply. **This information must be completed for all contracts and amendments.** For Statewide Contracts, OSD may enter the Comm-PASS ID in addition to the MMARS doc id.

Request for Response (RFR)/Procurement Reference number or other Contract Identifier. Enter the reference number of the RFR or other Procurement Number for this Contract or Amendment (even if you are using an RFR that was issued by another Department). If the RFR was posted on Comm-PASS, use RFR Reference Number as posted. If an RFR was not used, enter Contract No. or other reference number. If none, indicate "N/A". This information is necessary for Audit, Quality Assurance and Records Management purposes.

Account(s) Funding Contract: Enter the account(s) funding the Contract. This information can be entered after the Contract is executed. If more than one ID has been used for this Contract or Amendment, identify all that apply. **This information must be completed for all contracts and amendments.** Funding accounts may change during the life of Contract. Please note that accounts with earmark language that provide a procurement exception may not be replaced in whole or in part with a different funding account (that does not have earmarked or procurement exception language) unless a procurement process or exception is supported under the new funding account. Earmark or procurement exception authorization in one account is not transferable to another funding source.

CONTRACT TYPE: The Department must select one of two options to indicate whether this is a "NEW CONTRACT" or a "CONTRACT AMENDMENT/RENEWAL" and complete the "Left" side only for New Contracts, and the "Right" side only for Contract Amendments/Renewals.

FOR NEW CONTRACTS (left side):

COMPENSATION: Identify if the Contract has a **Maximum Obligation** or is a **Rate Contract**:

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- **Maximum Obligation.** A maximum obligation is used for either unit-based or project-based compensation when performance (commodity, service, grant, etc.) is predictable and measurable and a maximum amount of funds will be set aside for the Contract.
 - The amount entered in this space must be fully encumbered by the Department for the duration of the Contract (including "out years" for multi-year contracts) according to the **Effective Date**, and any settled obligations that are included.
 - Any fiscal year in which Contract Terms will still be effective, but no compensation will be paid, must also be reflected in MMARS to ensure that the total duration of the Contract is included.
 - The attached budget or cost information must match the Contract Maximum Obligation (or as amended) and the MMARS transaction.
- **Rate Contract.** A Rate Contract is used when the rate per unit of performance (e.g., commodity or service) is known but the number of units that will be needed during the Contract period is unknown or may vary based upon need or usage. Rate Contracts are also used when there are multiple Contractors available to provide performance and it is unknown which Contractors will be selected at any given time to provide performance. If the Rate Contract is signed solely with one Contractor, the Department must encumber sufficient funds on behalf the Contractor to support the anticipated use of the Contract. If the Rate Contract is signed with multiple Contractors that may or may not provide performance during the Contract period, the Department must encumber sufficient funds to support the anticipated use of the Contract. The encumbrances may be "vendor specific" with one encumbrance per Contractor, or may be done through a Departmental Master Agreement (MA) or a [CT with Event Type 51](#) ("open order") if not tied to a Departmental MA (where funds are not encumbered on behalf of any single Contractor). Attach rates and types of unit (per hour, day, week, item, etc.) including any supporting documentation for rates. If rates are to be negotiated, attach a description of the process, index or schedule that will be used to negotiate the rates. Rate Contracts with negotiated rates should identify a range of rates or a cap in rates and may not be used for open-ended arrangements but are appropriate for lists of pre-qualified contractors and certain Statewide Contracts for which rates are negotiated on a per project, program, task or work order basis depending upon the performance required.

Commonwealth Terms and Conditions That Apply To This Contract: Check either "Commonwealth Terms and Conditions" or "Commonwealth Terms and Conditions for Human and Social Services", whichever is applicable to the Contract performance. (See [Expenditure Classification Handbook](#) for assistance in determining applicable Commonwealth Terms and Conditions). The applicable "T&C" is signed only once by the Contractor and filed by the initial contracting Department with the [Office of the Comptroller \(CTR\)](#) and is recorded on the VCUST table on the "Business Type" screen. The signed and filed Commonwealth Terms and Conditions will be incorporated by reference and apply to any contract, Grant or other agreement entered into by the Contractor and any Commonwealth Department. Therefore, Contractors do not have to re-sign the applicable T&C for subsequent procurements or contracts, unless the Contractor has a legal name change, or a [major structural change](#).

Departments are required to verify that the T&C is executed by an [Authorized Signatory](#) of the Contractor. The applicable T&C must be on file at CTR PRIOR to submitting this Contract for encumbrance processing at either CTR or OSD, or if the Department has transaction delegation, prior to processing the encumbrance in MMARS. A Department must check the MMARS VCUST under the "Business Type" tab to determine if the Contractor has already signed the applicable Commonwealth Terms and Conditions and should not request additional copies if already filed. Contractors may submit photocopies of a previously signed T&C if so requested. Additional original T&Cs should not be retained by a Department, but must be sent to the Office of the Comptroller Payee Unit to be maintained on file to ensure that CTR and the VCUST table reflect the most recent documents.

If the Contractor does not have the applicable Commonwealth Terms and Conditions on file and recorded on the MMARS VCUST table, the Department must complete a VCM on MMARS and then mail the completed Commonwealth Terms and Conditions to CTR's Payee Unit. Changes to the Contractor's identity during the period of the Contract require an updated W-9 and execution of another Commonwealth Terms and Conditions reflecting the new information. See Guidelines for Material Changes in Contractor Identity under [Amendments, Suspensions, and Termination Policy](#). For more information on Vendor Code requirements see [Vendor File](#) Policy.

Procurement or Exception Type: Check the appropriate type of procurement or exception for this Contract. Only one option can be selected.

- **Commodity or Service Contracts.** If the Contract is for the procurement of commodities or services, the Department must indicate if the Contract was procured as a "Single Department Procurement/Single Department User Contract"; "Single Department Procurement/Multiple Department User Contract"; "Multiple Department Procurement/Limited Department User Contract"; or a "Statewide Contract (Only for use by OSD or an OSD-designated Department)". See [Commodities and Services Policy](#) and [Use of a Procurement by a Single or Multiple Departments](#) for more information and documentation requirements for these options.
- **Grants.** If the Contract is being used for the award of a Grant, the Department must check "Grant". Grants are governed by [815 CMR 2.00](#) and [State Grants and Federal Subgrants Policy](#). See "[Required Standard Contract Form Contents](#)" below for additional information.
- **Competitive Procurement Exception.** If the Contract did not result from a competitive procurement, the Department must check off the appropriate exception: "Emergency Contract"; "Contract Employee"; "Collective Purchase approved by OSD"; a "Legislative/Legal Exemption" or "Other" (and specify procurement exception). Documentation proving the exception and a justification memorandum identifying how the Contractor was selected and why the selection represents best value, must also be attached. See "[Required Standard Contract Form Contents](#)" below for additional information. Please note that the "Interim Contract" competitive procurement exception is only available for Contract Amendments/Renewals (right side of form; see below).

Anticipated Start and End Dates: See [Effective Date, Anticipated Start Date and End Date](#) below.

FOR CONTRACT AMENDMENT/RENEWAL (right side):

There are no automatic Contract Renewals and both parties must execute an Amendment for a Contract Renewal. Any "material" change in the Contract terms must also be memorialized in an Amendment even if the Maximum Obligation or a corresponding MMARS transaction is not needed to support the change. "Material" changes are any significant change to the performance obligations of a Contractor or the performance expectations of the Department (such as any change in duration or maximum obligation). Minor adjustments to the scope and budget that do not materially impact the maximum obligation or performance responsibilities of the Contractor, or do not materially change the performance expectations of the Department do not require a formal Amendment, but it is presumed that the terms of performance (scope) and costs (budget) will be updated as part of the Contract file, unless already identified under the Contract. See [Amendments, Suspensions, and Termination Policy](#) for further guidelines on Amendments and Options to Renew.

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The parties may negotiate a change in any element of contract performance or cost identified in the RFR or the Contractor's response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response. Provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response, it is negotiable.

CURRENT CONTRACT START AND END DATES: Enter the "Current Start Date" and the Current End Date" for the Contract prior to the Amendment. This information is necessary to validate the MMARS transaction that is being changed and to ensure that the dates of performance are accurate for the entire duration of the Contract. This information can be obtained from the original contract form, or if previously amended from the Amendment Form.

COMPENSATION: Check either, "No Compensation Change"; "Redistribute Budget Line Items"; "Maximum Obligation" or "Rate change".

- **No Compensation Change**, should only be selected if there is no change to the compensation under the Contract, including Maximum Obligation, Line-item redistribution or Rates. Then Skip to "Other" and identify the type of Amendment being made and attach documentation for change.
- **Budget Line Items Redistribution (No Maximum Obligation Change)**. Identify any changes in budget line items that move funding around within current Maximum Obligation and procurement parameters. Attach amended performance and budget terms to support redistribution.
- **Maximum Obligation Change**. (Check off this section and complete if Maximum Obligation is increasing or decreasing.)
 - a) Enter Current Total Contract Maximum Obligation (prior to Amendment/Renewal reflecting all prior amendments).
 - b) Enter the Amendment/Renewal Amount (indicate whether increase or decrease by including "+" or "-" respectively before the amount). (MMARS transaction must match this amount.)
 - c) Enter New Total Contract Maximum Obligation, which must equal the Current Total Contract Maximum Obligation plus ("+") or minus ("-") the Amendment/Renewal amount. (MMARS transaction must match this amount.)
 - d) **Note: Carry over funds**. Multi-year contracts in which encumbered amounts in any fiscal year that remain unexpended at the close of the fiscal year are NOT automatically available for compensation for Contractor performance in subsequent fiscal years unless so authorized by the Department. For operating accounts, unexpended balances revert at the close of the fiscal year and are not available for subsequent fiscal year obligations. Unexpended, encumbered amounts in continuing accounts (federal, trust, capital) will balance forward obligation ceilings for these amounts in MMARS. The Department is responsible for reconciling performance and expenditures in each fiscal year and authorizing use of carry over amounts for performance in the subsequent fiscal year(s) either as part of amendments to the scope and budget of the Contract, and underlying MMARS transactions, or as part of the original Contract performance terms and budget.
- **Rate Changes to Rate Contract**. (Check off this section if Rates are being changed. Attach rate changes.)

OTHER (Check off Change and attach all supporting documentation):

- **Amend Duration Only (No Compensation Change)**: Check off this section only if duration is being changed with no changes to compensation or performance. This option is commonly used to extend the date for completion of performance with no additional compensation.
- **Amend Scope of Services/Performance Only** (no budget impact): Attach detailed description of changes to Scope or performance.
- **Interim Contract**: Check off this section for a temporary extension (Interim Contract) of a current Contract in order to accommodate the completion of a new procurement.
- **Other**: (Describe Details of the other type of amendment and attach documentation)

Payments and Prompt Pay Discounts. Payments under this Contract or Amendment are made in accordance with the applicable Commonwealth Terms and Conditions and the Commonwealth [Bill Paying Policy](#).

- **Electronic Funds Transfer (EFT)**. If the Contractor does not yet receive payments electronically, the Contractor should complete the [Authorization for EFT Payments Form](#). In addition to sending the remittance information to the Contractor's financial institution with the payment, CTR's [MassFinance/Vendor Web site](#) allows Contractors access to their remittance information, payment history and pending payments under their Vendor Code (listed above).
- **Legal Payment Date**. An invoice/obligation is considered legally paid based upon the Payment Issue date recorded in the state accounting system (MMARS) which will be when the payment is issued by the Commonwealth via EFT (Electronic Funds Transfer) when issuance file is transmitted to the bank or, for checks, when the check is sent to the U.S. Post Office by the State Treasurer's Office. The issuance date is the relevant date for Prompt Payment Discounts. (See [Prompt Pay Discount Policy](#).) Under the applicable Commonwealth Terms and Conditions, pursuant to [G.L. c. 29, s. 26, s. 27 and s. 29](#), obligations may not be incurred unless there are sufficient appropriated or non-appropriated funds available and allotted to support the obligations.
- **Intercept**. All payments due to the Contractor shall be subject to intercept pursuant to [G.L. c. 7A, s. 3](#) and [815 CMR 9.00](#). Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Offset shall include intercept of other funds paid to the Contractor from other state Departments. The Contractor may not penalize any state Department or assess late fees, or cancel a Contract or other services if funds are intercepted due to outstanding taxes, child support, or other overdue debts of the Contractor.
- **Prompt Payment Discounts**. This section of the Contract/Amendment is used to identify prompt payment discounts that the Contractor has agreed to provide if the Contractor is issued payment in less than the standard payment cycle of 30 days via [EFT](#). (See Commonwealth [Bill Paying Policy](#) and [Prompt Pay Discount Policy](#).) Prompt Payment Discounts are of greatest benefit to both the Commonwealth and the Contractor if the Contractor accepts payments through EFT. If the Contractor does not yet receive payments electronically, the Contractor should complete the [Authorization for EFT Payments Form](#). Prompt Payment Discounts should be negotiated for commodity and service contracts. If an Amendment is being executed, the current Prompt Payment Discounts should be re-entered and verified as current or new Prompt Payment Discounts should be entered if more beneficial to the Commonwealth. Check off the box if the Contractor has demonstrated a hardship from providing PPD or the Contract is for a grant, other financial assistance or other non-commodity or service that would not normally identify PPDs.
- **Invoices**. Invoices must be submitted in accordance with the terms of the Contract and the [Bill Paying Policy](#). Final invoices in any fiscal year must be submitted no later than August 15th for performance made and received (goods delivered, services completed) prior to June 30th, in order to make payment for that performance prior to the close of the fiscal year and reversion of appropriated funds. By signing this Contract or Amendment the Contractor agrees that if the Contractor fails to provide timely final invoices for final payments by August 15th, the Department may make payment based upon the terms and prices of the Contract for the goods or services that are accepted by the Department, and the Contractors acceptance of

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payment shall release the Commonwealth from further claims for payment. If the Contractor disputes the final payment and refuses payment, available funds may revert and may be delayed significantly until funds are available to make payment once the dispute is resolved, and the Department will not be subject to late payment interest for this delay.

- **Pandemic, Disaster or Emergency Performance.** In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Contractor agrees the Department may request performance changes related to the Contract, or may negotiate additional performance from the Contractor to address the emergency needs of the Commonwealth (subject to appropriation), even if not contemplated under the original Contract. Departments will receive guidance on allowable or mandated emergency actions in the event of an emergency.

Brief Description of Contract Performance: Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract or the reason for the Contract or Amendment. The description is used to specifically identify the Contract performance, match the Contract with attachments, and determine if the appropriate expenditure code (as listed in the Expenditure Classification Handbook) has been selected. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient. The Department may include any additional information in this section to identify unique or important information related to this Contract or the Contractor.

Effective Date, Anticipated Start Date And End Date

- The "Effective Date" of the Contract or Amendment is determined by the execution dates of the Contract and any required approvals as outlined in Section 1 of the applicable Commonwealth Terms and Conditions. For contracts exceeding the MMARS transaction delegation threshold that are routed through workflow to CTR and OSD may have the dates corrected in the state accounting system (MMARS) to reflect the legal Contract **Effective Date, as appropriate.**
- **For Contracts using the [Commonwealth Terms and Conditions](#),** *"the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later."*
- **For Human and Social Service Contracts using the [Commonwealth Terms and Conditions for Human and Social Services](#),** *"the effective start date of a Contract shall be the later of: the date the Contract was executed by an authorized signatory of the Contractor; the date the Contract was executed by an authorized signatory of the Department; the date specified in the Contract; or the date of Secretariat authorization pursuant to [G.L. c. 29, s. 29B](#)."*

The Contractor and the Department are required to certify that the "Effective Date" of the Contract or Amendment being executed is the latest date the Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, a later Start Date specified, or the date of any required approvals. **If the Effective Date of the Contract or Amendment is later than the Start Date listed,** the Contractor and Department agree that by signing the Contract or Amendment they have identified if any obligations have been incurred prior to the **Effective Date** for which a payment obligation has been triggered prior to that date, which shall be included as final settlement of these obligations as part of the Contract/Amendment and payment of these obligations shall release the Commonwealth from any claims related to these obligations.

- **Anticipated Contract/Amendment Start Date:** The Department must enter the "anticipated" start date of "obligations" under the Contract that will trigger a payment obligation. Departments must consider when a payment obligation is "incurred" (creates an obligation to make payment). For most goods, payments obligations are incurred when goods are delivered and accepted. For services, the Contract should specify if obligations are incurred based upon performance (such as performance charged at an hourly rate as services are provided; services for clients in residence, services upon request) or the date the services are made available (such as the start date of maintenance or customer service hours are available for use), or whether the performance obligation occurs at a later date, such as when a periodic, final report, program or system component is delivered and accepted, or other Contract milestone has been achieved (delivered and accepted). Most grants provide financial assistance for a public purpose, rather than a fee for service or good (or other performance) for the Department, and will have installment payments with obligations being incurred based upon the schedule of payments, grant milestones or reporting requirements in the Contract, not the actual date grant performance is started.
- **End Date of this Contract/Amendment:** The Department must enter the date the Contract will terminate. A Contract must be signed for at least the initial duration listed in the RFR, or other solicitation document (if applicable). Amendments to extend the termination date, such as exercising an option to renew, must be made using this Form and must be signed prior to any new obligations being incurred by the Contractor. Please see [Amendments, Suspensions, and Termination Policy](#) for additional guidelines.

CERTIFICATIONS AND EXECUTION: As part of Contract/Amendment execution, the Department and Contractor must identify whether any obligations were performed prior to the "Effective Date" of the Contract or Amendment (as outlined above). Contractors are not authorized to deliver performance for which compensation is sought under a contract or amendment (even if requested by the Department or any other Commonwealth representative) prior to the Contract effective start date of that contract or after the termination date of that contract. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding and a Department may not back-date a contract or amendment in order to cover the delivery of performance prior to the Contract effective date. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by the Contractor outside the scope of a Contract. In the event obligations have been incurred by the Contractor that were intended to be included as part of the Contract/Amendment prior to the Effective Date, the parties have two options to resolve the settlement of these obligations:

1. **Execute a separate [Settlement and Release](#) document** for the performance and attach to the original contract; OR
2. **Include the performance as part of the Contract/Amendment,** as follows: The Department would enter the actual date the performance obligations began under "**Anticipated Start Date**" for either the new Contract or Contract Amendment on the **Standard Contract Form** and check off box "2." indicating that the performance prior to the **Effective Date** is included under a Settlement. By completing the Contract/Amendment to include the performance prior to the **Effective Date**, the Department is able to enter the MMARS encumbrance to include the performance under the properly executed Contract/Amendment.

Please note that if **no performance occurred or was anticipated to occur until on or after the Effective Date** of the Contract/Amendment, the parties would check off box "1", thereby indicating that no obligations were incurred prior to the Effective Date.

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Authorizing Signature for Contractor/Date: The Authorized Contractor Signatory must, in their own handwriting and in ink, sign AND enter the date the Contract is signed. See section above under "[Anticipated Contract Start Date](#)". Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. **Rubber stamps, typed or other images are not acceptable.** Proof of Contractor signature authorization may be required by the Department if not already on file. See "[Required Standard Contract Form Contents](#)" section below. See also CTR [Department Head Signature Authorization Policy](#) for the policy requiring live signatures and signature dates and Contractor signature authorization verification. See [Contractor Authorized Signatory Listing](#).

Contractor Name /Title: The Contractor Authorized Signatory's name and title must appear legibly.

Authorizing Signature For Department/Date: The Authorized Department Signatory must, in their own handwriting and in ink, sign AND enter the date the Contract is signed. See section above under "[Anticipated Contract Effective Start Date](#)". **Rubber stamps, typed or other images are not accepted.** See also CTR [Department Head Signature Authorization Policy](#).

Department Name /Title: The Department Authorized Signatory's name and title must appear legibly. **For Contracts requiring secretariat signoff, if the Department Signatory is not an authorized signatory of the Secretary, evidence of Secretariat signoff must be included in the Contract file.**

EXPEDITED EXECUTION. The Contract/Amendment may be sent electronically to the Contractor, completed, executed by the Contractor and faxed back to the Department for start date purposes. The Department does not have to wait to receive a hard copy of the executed Contract/Amendment and may sign the fax copy for start date purposes. When the hardcopy of the Contractor's executed Contract/Amendment is submitted, the Department has the option of re-signing the hardcopy with the date from the earlier signed fax or may just attach the fax copy to the hardcopy of the Contract. In the alternative, the Department and the Contractor may each sign a separate Contract/Amendment and the two separately signed documents may be attached representing one executed Contract/Amendment, provided there are no conflicts in the information contained on each signed document.

PLEASE NOTE: Any corrections to information on the Standard Contract Form after execution must be initialed and dated by the parties. Faxed copies of initialed changes are sufficient for records management purposes, although hardcopies are preferred.

REQUIRED STANDARD CONTRACT FORM CONTENTS CHECKLIST

Originals or true attest copies of contracts. Massachusetts [G.L. c. 7A, s. 5](#) requires that either the original or a certified copy of all Contracts be filed as directed by the Comptroller. The "record copy" contents of a Contract (as listed below) must be filed either at CTR, OSD (commodity contracts) or at the Department if so delegated. Pursuant to the [Delegation of MMARS Transaction Policy](#) and 815 MCR 10.00, Departments retain the record copy of all contract documents. If a Contract exceeds the published delegation threshold, the Department must submit a copy of Contract package to CTR or OSD (Commodity contracts) for secondary review using the appropriate Transmittal Form (if applicable). CTR or OSD secondary review is not legal approval of a Contract, but an expedited quality assurance review to ensure Contract documents support minimum procurement and contracting requirements. All contracts are subject to additional post audit and quality assurance reviews. **The *Standard Contract Form* Instructions are incorporated by reference and are not required to be filed as part of the original or true attest copy of the *Standard Contract Form*.** A Department official who has seen the original of a document can attest that a copy submitted is a "true attest" or "true copy" of the original. This certification can be done on the top page of the copy or by attachment. See also [Department Head Signature Authorization Policy](#). For additional guidance for contents and submission requirements see [Contracts Quick Reference](#) and [State Finance Law and General Requirements Policy](#). In addition to this Standard Contract Form, the following Contract content checklists apply to each respective contract type:

CONTENT CHECKLIST FOR NEW CONTRACTS

- Applicable Commonwealth Terms and Conditions:** Department must verify if Contractor is already on VCUST table on MMARS. New Contractors must have T&C filed with CTR along with appropriate VCC/VCM to update table. T&C must be on file with VCUST before encumbrance can be entered for this Contract. For an existing Contractor's *Standard Contract Form*, [Contractor information must match VCUST table](#) for the Vendor Code, Division and Remittance address. (AD001, AD002...)
- Evidence of Procurement (if procurement done):** A copy of the RFR, or a Comm-PASS close-out Contract Summary screen print (provided the RFR has been properly closed out and the close-out Summary posted on Comm-PASS verifies the location of the RFR and RFR Reference Number on Comm-PASS), or copy of other solicitation, grant application, etc. (if applicable). The "Board Award Field" on MMARS Encumbrance must contain this reference number ID or exception ID (See Evidence of Exception below).
- Evidence of Exception (If competitive procurement was not done):** Attach documentation for the exception: Justification Memorandum for Emergency; copies of legislative language or other legal exemption for Contracts with legislative earmark or legal exemption from procurement; copy of approval from OSD for Collective Purchase Contract with federal or other public entity; or copy of posting/hiring documentation and resume for Contract Employees. Attach copy of public posting or notice of intent to contract with Contractor, if done. Also include documentation of how the Contractor was selected and why this selection supports best value; See also [801 CMR 21.05](#) and "Competitive Procurement Exceptions" of the [OSD Procurement Information Center \(PIC\)](#). For grants, see by [815 CMR 2.00](#) and [State Grants and Federal Subgrants Policy](#).
- Please note that if Emergency performance or other contract performance has been **fully completed** prior to signing this *Standard Contract Form*, and no additional performance is intended to be made after signing this Standard Contract Form, Departments may use the [Settlement and Release Form](#) in lieu of the Standard Contract Form to document completed performance to enable final payment.
- Contractor's Response:** an original or true attest copy of the Contractor's Response (bid) to the RFR or Response to another procurement or grant application, or a copy of the Responses if the RFR/procurement was conducted by another procuring Department. Attach any additional negotiated terms that either modify or are in addition to the RFR or Response. If an RFR or other procurement was not done, attach a detailed description of the scope of performance, work or task order, and a detailed budget or schedule of fees or compensation for this Contract. [Performance terms](#) may not modify terms of applicable Commonwealth Terms and Conditions or Standard Contract Form.
- Human and Social Services Contracts:** attach required [Human and Social Services Attachments 1-6](#). See [Instructions for Attachments](#).
- Individual Contractors:** Departments hiring "individual contractors" as either "contract employees" or "independent contractors" are required to comply with the policy [Individual Contractors - Independent Contractors vs. Contract Employees](#) and attach the [Employment Status Form](#).

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- Consultant Contracts** (HH, N01-N14, U05 object codes per the [Expenditure Classification Handbook](#)):
 - **Contractor Disclosures.** Contractors must disclose [Individuals with Financial Interest](#) (if applicable); [Other income](#) (if applicable); and [Key Personnel](#). Please note that key personnel may be deemed to be state or special state employees pursuant to [G.L. c. 268A](#). Contractors may make required disclosures as part of the RFR Response, by attachment or may use the [Consultant Contractor Mandatory Submission Form](#).
 - **Secretariat Signoff.** Departments must obtain secretariat signoff for all contracts under [G.L. s. 29, s. 29A and s. 29B](#) PRIOR to performance beginning. Secretariat signoff does not have to be on the Standard Contract Form, but must be included as part of the Contract File.
 - **TELP (Tax Exempt Lease Purchase).** TELP attachments: ANF TELP Authorization Form, TELP Lease Purchase Quote, Acceptance Certificate, Essential Use Letter) must be included. Certificate of Appropriation and Payment Schedule. Payment schedules must use current MMARS standard recurring payment schedule: See RPSCHD (TELP–quarterly; TEMO–monthly; TESA–semi-annual, TEAN–annual). TELPs paid with state funds must use the Commonwealth TELP (ITD) or the Statewide TELP (OSD). Please note that TELP payments take the highest priority for payment, even above payroll. Contact CTR immediately if Department faces any uncertainty of making TELPs payments on time. Please coordinate with ANF to ensure sufficient allotments to make timely payments.
 - **Legal Services Contracts (H09, N03).** All Commonwealth Departments are required to obtain:
 - **GOV Approval.** Attorneys hired by Executive Departments are required to competitively procure all legal services (See [801 CMR 21.01\(2\)\(b\)](#)) and obtain prior approval of the Governor's Chief Legal Counsel PRIOR to posting or hire (See [G.L. c. 30, s. 65](#).)
 - **AGO Review.** PRIOR to the start of performance, prior review of planned services by the Office of the Attorney General (AGO) for legal representation of the Department under a contract, and appointment as a Special Assistant Attorney General "SAAG" for litigation services. The [Attorney General Review Form for Attorneys Providing Legal Services](#) form must be completed and mailed (with required attachments) to the AGO for any new legal services contract, and for any significant amendment to the scope of services under an existing contract, PRIOR to the start of performance or a material change in performance. See: [Attorney General Policy for Prior Review of Attorneys](#).
 - **MMARS Encumbrance - Rates and Purpose in Comments Field.** For Executive Departments, the MMARS encumbrance "Comments field" must contain the Units and "Rates" or "Range of Rates" for the services and a brief description of the type of services under the engagement to enable completion of annual reporting requirements under [G.L. c. 30, s. 65](#). Departments that fail to include this information as part of the original encumbrance will be required to modify the encumbrance to add this information in order to complete reporting requirements.

CONTENT CHECKLIST FOR AMENDMENTS

- Attach a detailed description of the changes that are being made to the scope of performance (if any), and any corresponding changes to the detailed budget or schedule of fees. For renewals funded by continuing accounts, verify if any carry over funds from prior fiscal years need to be re-authorized for the current or a future fiscal year.
- For Interim Contracts (or for grants), attach justification memorandum for reasons for Interim Contract (or for grant).
- If Contractor is undergoing a major [structural change](#) which impacts the underlying procurement, the Contractor may be required to negotiate continued performance and execute a [Contractor Change in Identity Form](#) INSTEAD of this Standard Contract Form. See the [Amendments, Suspensions, and Termination Policy](#) for additional information. [Performance terms](#) may not modify terms of applicable Commonwealth Terms and Condition or Standard Contract Form.

CONTENT CHECKLIST FOR ALL CONTRACTS AND AMENDMENTS

- Form W-9** if Contractor is not already on VCUST table (new Contracts). If new W-9, file with CTR with T&C and VCC. For Existing Vendors, verify that [VCUST matches any new W-9 and the Standard Contract Form](#), and if there is new information on W-9 or **Standard Contract Form**, update VCUST with updated W-9 and VCM. For Amendments, no updates are necessary unless the Contractor's information on the **Standard Contract Form** is changing which may require an updated W-9 and T&C. If Contractor is undergoing a major [structural change](#) which impacts the underlying procurement, the Contractor may be required to negotiate continued performance and execute a [Contractor Change in Identity Form](#) INSTEAD of this Standard Contract Form. See the [Amendments, Suspensions, and Termination Policy](#) for additional information. Vendors must be careful when submitting W-9s that information is accurate, since the VCUST table will be updated for all business with the Commonwealth. Departments should verify with the Contractor when information is updated to ensure that the update is accurate since changes will impact all business with the Commonwealth.
- Contractor Signature Verification For All Contracts, Grants or Other Agreements.** The [Contractor Authorized Signature Listing](#), or any other alternate format, may be used for this purpose. Pursuant to the [Contractor Authorized Signatory Policy](#), Departments are responsible for verifying that the **Standard Contract Form**, T&C, W-9 and other documents related to the Contract (regardless of amount) is signed by an authorized signatory for the Contractor. Verification includes authentication of identify and authority to sign of the person signing the documents.
- MMARS must match total Contract, including settlements.**
 - Current state finance law policy requires the information input in MMARS to match the underlying contract or supporting documents, including extensions, renewals and amendments. What appears in the MMARS system will be considered the "official record" or "record copy" of fiscal activities and will supersede paper or other formats of the same information. Therefore, the MMARS encumbrance must match the terms of the Contract including Vendor Code, start and end dates and compensation. If a settlement is part of the Contract or Amendment, include all settlement amounts on the same MMARS encumbrance as the Contract/Amendment, unless otherwise directed by CTR.
 - MMARS encumbrances must be entered as soon as possible after Contract/Amendment execution to ensure funds are timely encumbered.
 - At least one commodity line with appropriate corresponding accounting line is required for each budget fiscal year of the Contract.
 - All supporting documentation must be included in the Contract File. Departments must remember that MMARS is an accounting system, which is used to accurately record and report on fiscal activities. Compliance responsibility remains at all times with the Department employees who process documents to "Final" status. Since MMARS will track the UAID of the Department employee who approves documents, quality assurance reviews will identify not only the documents that will be reviewed, but also the security identification (UAID) of the employee who

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approved the MMARS transactions. Departments must be especially careful when modifying MMARS transactions (such as encumbrances) to support contract extensions and amendments, specifically effective dates. It is improper for Departments to enter a modification to a MMARS transaction to reflect start and end dates that are not supported by the underlying Contract documentation.

- o MMARS changes/adjustments with no underlying Contract changes do not require a Contract amendment. For fiscal changes with no underlying Contract change that exceed the Department's [MMARS transaction processing limit](#), submit a **CTR Transmittal Form** referencing the Doc Id of the MMARS document and indicating the change required (Non-Commodity contracts). For example, enter the Doc Id and "**Rate Contract Increase/Decrease**" for Rate Contract increases and decreases in total obligations. For appropriation account changes (switching, adding or deleting accounts) with no underlying contract change, enter Doc Id and "**Appropriation Account Change**".

- Records Management – Procurement and Contract Files.** In accordance with 815 CMR 10.00, the Department is the record keeper of the official record copy of the Contract documents and the Contract/Procurement file. MMARS is the official record of the encumbrance and payment documents and will supersede any paper copies of the same information. The Contract/Procurement file must contain, or refer to the location of, all documentation related to the Procurement and resulting Contract(s). A Department is responsible for retaining and archiving Contract records in accordance with the [Statewide Records Retention Schedule](#) issued by the Secretary of State Records Conservation Board.
- Public Information and Privacy Concerns.** It is important to provide Contractors with remittance information that will facilitate proper payment application to their receivables. When negotiating a Contract, Departments should establish a mutually agreeable data structure to communicate goods delivered or services rendered. Since these fields are a matter of public record, MMARS Doc IDs (encumbrances, payments, etc.), vendor invoice numbers, contract numbers, check descriptions, and any comment fields **MUST NOT** contain personal information (such as individual's names, SSN numbers, bank account numbers, date of birth, addresses etc.) or other information that could jeopardize privacy or facilitate identity theft. MMARS Doc IDs and key comment fields may be printed on checks, sent electronically as part of remittance advice, and will appear on VendorWeb (and may be viewed related to public records requests), therefore care must be taken that individual personal information is not used.

CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

By executing this Contract, the Contractor under the pains and penalties of perjury, makes all certifications required under the certifications listed below, and has provided all required documentation and disclosures (identified below with an "→"), or shall provide any required documentation upon request, and the Contractor agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached to this Contract or incorporated by reference herein, including in the following order of precedence: the terms of the applicable Commonwealth Terms and Conditions available at www.mass.gov/osc under [Guidance For Vendors - Forms](#) or at www.mass.gov/osd under [OSD Forms](#), the terms of the Standard Contract Form and attached [Instructions](#), the Request for Response (RFR) or solicitation (if applicable), the Contractor's response to the RFR or solicitation (if applicable), and any additional non-conflicting negotiated provisions:

- The Contractor is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards, including obtaining requisite licenses, registrations, permits and resources for performance; and that the Contractor shall provide access to records to state officials under [Executive Order 195](#) and [G.L. c. 11, s.12](#); and the Contractor certifies that the Contractor and any of its subcontractors are not currently debarred or suspended by the federal or state government under any law or regulation including, Executive Order 147; [G.L. c. 29, s. 29F](#) and [G.L. c. 152, s. 25C](#).
- The Contractor shall comply with [the terms of the Request for Response \(RFR\) or solicitation for this Contract, if applicable; and any additional negotiated provisions for this Contract. Including the RFR – Required Specifications](#) if an RFR was done for this Contract, which are incorporated by reference herein if not already included as part of the Request for Response under [801 CMR 21.00](#); or for any other procurement;
- The Contractor shall comply with all applicable state laws and regulations including [Massachusetts General Laws](#); Official [Code of Massachusetts Regulations](#); [Partial CMR Listing](#); [801 CMR 21.00](#) (Procurement of Commodity and Service Procurements, Including Human and Social Services); [815 CMR 2.00](#) (Grants and Subsidies); [808 CMR 1.00](#) (Compliance, Reporting and Auditing for Human And Social Services); [AICPA Standards](#); confidentiality of Department records under [G.L. c. 66A](#); and the [Massachusetts Constitution Article XVIII](#) if applicable.
- The Contractor agrees to the terms for "[Effective Date](#)" and "[Payments](#)" and any terms under the [Instructions](#) of this Contract or Amendment. The Contractor certifies that there is no authorization to deliver performance for which compensation is sought under this Contract or Amendment (even if requested by the Department or any other Commonwealth representative) prior to the effective date and that any oral or written representations, commitments or assurances made by the Department or any other Commonwealth representative are not binding and a Department may not back-date this Contract or Amendment in order to cover the delivery of performance prior to the Effective date. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by the Contractor outside the scope of a Contract or Amendment.
- The Contractor certifies Tax Compliance with [Federal tax laws](#); State tax laws including [G.L. c. 62C](#), [G.L. c. 62C, s. 49A](#) (the Contractor has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support and is in good standing with respect to all returns due and taxes payable to the commissioner of revenue); reporting of employees and contractors under [G.L. c. 62E](#), withholding and remitting [child support](#) including [G.L. c. 119A, s. 12](#);
- The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing if there is any risk to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment.
- The Contractor shall affirmatively disclose the details of any pertinent judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules. Contractors must affirmatively disclose any [potential structural change](#) in its organization at least 45 days prior to the change.

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- **Corporations.** If incorporated, the Contractor certifies that it has identified the Contractor's state of incorporation, and the Contractor certifies compliance with all filing requirements of both the incorporating state and the Massachusetts Secretary of State. If the Contractor is a foreign corporation, the Contractor certifies compliance with all requirements for certification, reporting, filing of documents and service of process.
- **Filing of required certificates and reports.** The Contractor certifies compliance with filing requirements for the [Secretary of the Commonwealth](#) and [Office of the Attorney General](#) or other Departments as related to its conduct of business in the Commonwealth;
- **Employer requirements.** If an employer, the Contractor certifies compliance with applicable state and federal employment laws or regulations, including but not limited to [minimum wages and prevailing wage programs and payments](#); [unemployment insurance](#) and contributions; [workers' compensation and insurance](#); [child labor laws](#); [AGO fair labor practices](#); [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00 \(Minimum Fair Wages\)](#); [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c. 153](#) (Liability for Injuries); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) (Federal Family and Medical Leave Act); [AGO Consumers and Civil Rights](#);
- **Federal And State Laws And Regulations Prohibiting Discrimination** including *but not limited to* the Americans with Disabilities Act; [42 U.S.C. Sec. 12,101, et seq.](#), [Disability Law Resources](#); the [Rehabilitation Act](#), [29 USC c. 16 s. 794](#); [29 USC c. 16 s. 701](#); [29 USC c. 14, 623](#); the [42 USC c. 45](#); (Federal Fair Housing Act); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); the [Public Accommodations Law](#) [G.L. c. 272, s. 92A](#); [G.L. c. 272, s. 98](#) and [G.L. c. 272 s. 98A](#); the [Massachusetts Constitution Article CXIV](#) and [G.L. c. 93, s. 103](#); [47 USC c. 5, sc. II, Part II, s. 255](#) (Telecommunication Act; Chapter 149, [Section 105D](#), [G.L. c. 151C](#), [G.L. c. 272, Section 92A](#), [Section 98](#) and [Section 98A](#), and [G.L. c. 111, Section 199A](#), and [Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities](#), and related [Standards and Guidance](#), authorized under [Massachusetts Executive Order 478](#) or any disability-based protection arising from state or federal law or precedent. See also [MCAD](#) and [MCAD links and Resources](#);
- **Northern Ireland Certification.** Pursuant to [G.L. c. 7 s. 22C](#) for state agencies, state authorities, the House of Representatives or the state Senate, the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.
- **Executive Orders.** For covered Executive state Departments, the Contractor certifies compliance with applicable [Massachusetts Executive Orders](#) (for most recent, see [Governor's Executive Orders](#)) including but not limited to:
 - **Executive Order 481.** Prohibiting the Use of Undocumented Workers on State Contracts. For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established the Contractor certifies under the pains and penalties of perjury they shall not knowingly use undocumented workers in connection with the performance of Contracts; that, pursuant to federal requirements, they shall verify the immigration status of all workers assigned to Contract without engaging in unlawful discrimination; and that they shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. The Contractor understands and agrees that breach of any of these terms during the period of a Contract may be regarded as a material breach, subjecting Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.
 - **Executive Order 478.** Non-discrimination. Diversity. Equal Opportunity, and Affirmative Action. And **Executive Order 390.** Establishing an Affirmative Market Program in Public Contracting. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies that they are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and committing to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of Contract that may subject Contractor to appropriate sanctions.
 - **Executive Order 130.** Anti-Boycott. The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by Section 2 of Chapter 151 E, Massachusetts General Laws. If there shall be a breach in the warranty, representation, and agreement contained in this paragraph, then without limiting such other rights as it may have the Commonwealth shall be entitled to rescind this contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.
 - **Executive Order 346.** Hiring of State Employees By State Contractors. Contractor certifies compliance with both the conflict of interest law [G.L. c. 268A specifically s. 5 \(f\)](#) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.
 - **Executive Order 444.** Disclosure of Family Relationships With Other State Employees. Each person applying for employment within the Executive Branch under the Governor must disclose in writing, upon such application, the names of all immediate family as well as persons related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed. (This section applies to Contract Employees.)
- **Consultant Contractor Certifications.** (For Consultant Contracts "HH" and "N01-N14" and "U05" object codes). Contractors may make required disclosures as part of the RFR Response, by attachment or may use the [Consultant Contractor Mandatory Submission Form](#);

COMMONWEALTH OF MASSACHUSETTS - STANDARD CONTRACT FORM



- **→Disclosure of Additional Income.** Pursuant to the provisions of M.G.L. c. 29, s. 29A, the Contractor shall affirmatively disclose any contracts, grants or other income due from entities other than Commonwealth state Departments (including any political subdivision or public authority) during the period of a Contract. For state departments, the Department can identify all obligations and payments made through MMARS through a query or through [Vendor Web](#) using the Contractor's listed Vendor Code.
- **→Disclosure of Persons with Financial Interest (other than the Contractor).** Pursuant to the provisions of M.G.L. c. 29, s. 29A and c. 7A, s. 6, the Contractor shall affirmatively disclose all individuals (other than the Contractor) who have a financial interest of more than one percent (1%) interest in the capital stock of the Contractor. If no disclosure is made, Contractor is certifying that this section is not applicable.
- **→Key Personnel.** The Contractor shall identify all key personnel assigned to the performance of this Contract, in addition to the Contract Manager. Key personnel may not be changed without prior written approval of the Department.
- **Anti-Lobbying Requirements.** The Contractor certifies compliance with federal anti-lobbying requirements including [31 USC 1352](#); [other federal requirements when receiving federal funds](#); [Executive Order 11246](#); [Air Pollution Act](#); [Federal Water Pollution Control Act](#).

II. Background, General Terms

A. Background

1. On October 5, 2009, DOER issued the Program Opportunity Notice (PON) Energy Efficiency and Conservation Block Grant (“EECBG”) Program 2009; Application for Competitive Municipal Sub-Grants PON-ENE-2010-009, (“the PON”) and amended it on November 25, 2009. The grant agreement resulting from this process is subject to 815 CMR 2.00 et seq.
2. Town of Sudbury (“Grantee”) submitted a response to the PON on or before the December 7, 2009 due date.
3. DOER has selected the Grantee to receive EECBG funds for projects described in Grantee’s response to the PON.
4. EECBG funds for programs outlined in the PON are made available in whole or in part by the American Recovery and Reinvestment Act of 2009 (the “ARRA”). This Contract is governed by the provisions of ARRA, Chapter 30 of the Acts of 2009, the Commonwealth of Massachusetts’ Procurement Policies and Procedures, and federal regulations and other guidance from the federal government implementing ARRA (collectively, “Recovery Act Requirements” or “ARRA Requirements”), and the Grantee agrees that it will comply with all aforesaid ARRA Requirements that are applicable to this Agreement.
5. DOER approves the expenditure of said EECBG funds as described in Attachment B (Budget) for the work planned and described in Attachment A (Scope of Grant Award).
6. The Grantee agrees to complete the projects described in the Scope of Grant Award (collectively referred to as “the Project”) and in all referenced or supplementary documents, letters, agreements and memoranda with due diligence.

B. General Terms

1. State Financial Assistance and Scope of the Project

DOER shall, subject to the terms and conditions set forth herein, provide financial assistance in the form of a grant for the purposes set forth in the Attachment A - Scope of Grant Award attached and incorporated by reference into this Agreement. Pursuant to this Agreement, from time to time, the parties may adjust the Scope of Grant Award, upon mutual agreement.

Grantee acknowledges that EECBG funds cannot be combined with other ARRA funds, and that EECBG funded solar photovoltaic projects cannot receive any rebate funds from the Commonwealth Solar Stimulus program. Grantee further acknowledges that if more than 67% of the capital costs for a solar photovoltaic project are provided by EECBG funds, that project is not eligible for RPS solar carve out.

2. Amount of Grant Award

- a) The total amount of the grant award is one hundred forty one thousand eight hundred sixty four dollars as further described in Attachment B – Budget.
- b) The Grant Amount provided by DOER shall not exceed the total “Maximum Obligation” stated in Commonwealth of Massachusetts Standard Contract Form.

3. Procurement

All procurement contracts and subcontracts entered into by public agencies and governmental bodies shall be governed by and in accordance with Massachusetts General Laws. Where applicable, such procurements, contracts and subcontracts shall be governed by the all provisions of either M.G.L. c.25A, § 11C or §11I, M.G.L. c.30B, or M.G.L c.149. All designer selection for building projects shall be governed by M.G.L. c.7, §§38A^{1/2} - O.

All procurements by Grantee under this agreement must be posted on Com-Pass, in accordance with the Operational Services Division Memorandum dated July 16, 2009 - Attachment E.

4. Disbursement of Funds

DOER shall make disbursements of grant funds to the Grantee only after receipt of: (1) this executed Agreement and (2) proof to DOER’s satisfaction that any contingencies for funding described in the Scope of Grant Award have been met. DOER will then make disbursements in accordance with the Scope of Grant Award.

DOER reserves the right to withhold disbursement of any funds pending an on-site inspection to confirm physical conditions and/or proper fulfillment of grant requirements. It is understood by all parties that the disbursement of the Funds by DOER for the scope of work identified in Attachment A shall constitute neither the Commonwealth's approval nor acceptance of the work, design, labor or materials paid for with such funds.

If, at any time prior to the completion of the Project, DOER finds, in its sole discretion, that the Scope of the Grant Award is not being adhered to for any component of the Project, DOER may require that all or

part of the grant funds be returned to DOER and withheld until DOER is satisfied that the Scope of the Grant Award is being observed.

5. Supervision, Inspection and Review

The Grantee agrees that it shall diligently enforce the terms of its contracts and subcontracts with its own consultants or contractors performing work on the Project or with vendors supplying Project-related services and or materials, and that it shall competently carry out the supervision and inspection of the Project to insure that the work is completed in accordance with the specifications in its contracts and subcontracts.

The Grantee shall conduct such supervision in a professional manner to the satisfaction of DOER. The Grantee shall permit DOE, DOER and their representatives to review all work being done by Grantee's consultants, vendors, and contractors as well as to review the supervision of the Project by the Grantee, and to review materials, payrolls, personnel records, conditions of employment, engineer and contractor time sheets, invoices of materials, books of account, and other data and records in connection with the development and execution of the Project. The Grantee shall require of all its consultants, vendors, and contractors that they allow DOER such access at reasonable times. Further, in all agreements for construction, Grantee must include provisions that give DOER the right to make on-site inspections of the work in progress at reasonable times, and which provide DOER with reasonable access to the site as well as to all pertinent records of any such vendor, contractor, or subcontractor.

6. Separate Accounts

The Grantee shall at all times conduct its business and affairs in such a manner that any and all ledger accounts and records pertaining to the receipt and expenditure of DOER funds under this Agreement shall be kept separate and distinct from all ledger accounts and records of the Grantee relative to any other enterprise which the Grantee has engaged in, developed, or administered.

7. DOER Rights with Respect to Grantee's Accounts

- a) At the time of establishing any separate ledger accounts pertaining to the receipt and expenditure of DOER funds under this Agreement, the Grantee's treasurer or chief financial officer shall provide documentation satisfactory to DOER to the following effect:
 - i. upon direction from DOER, the Grantee will make no further withdrawal or expenditure of DOER grant funds; and
 - ii. Grantee shall honor any written request from DOER for the withdrawal and return of said funds.

- b) Including but not limited to the following circumstances, the Grantee agrees that DOER shall have the right to direct the Grantee to return to DOER, until such further notice, funds from an account maintained by the Grantee which contains DOER funds for the Project as indicated below:

- i. the Grantee shall have defaulted in the observance or performance of any one or more of the terms, covenants or conditions of this Agreement including its Attachments, Appendices, and Addenda (if any); or
- ii. the Grantee shall have made any misrepresentation of material fact in its Project Application or in any of the certificates, reports, statements, or other documents or data required to be submitted pursuant to this Agreement.

In any such event, the Grantee shall return to DOER upon request the funds provided under this Agreement.

- c) Further, if the Grantee or any member, officer, servant, agent, or employee of the Grantee perpetrates any fraud or intentional misrepresentation, or spends the Funds improperly, DOER may also make a demand upon the Grantee for any Funds expended or not expended which have been awarded to the Grantee, at which time the Grantee may be required to reimburse DOER for the full amount of the Grant Award.

8. Reports

The Grantee shall be required to file progress and financial reports once every quarter, unless specifically exempted by DOER. Quarterly reports are due by 5pm 4 days after the completion of each of the following quarters: Jan 1 – Mar 30; Apr 1 – June 30; July 1 – Sept 30; Oct 1 – Dec 30. These reports shall include:

- a) the progress and status of activities performed in relation to the Scope of Grant Award including an explanation of any delays or obstacles encountered in meeting the performance schedule as well as a description of efforts taken to resolve delays;
- b) the actual costs incurred to date by the Project, breaking down all costs in such manner as DOER may prescribe; and
- c) reports further described in section G of the Scope of Grant Award.

A Final Report must be filed within two months of completion of the construction. Said report shall be prepared according to a method approved by DOER and shall conform to such other requirements as DOER may from time to time establish, including those in Section 8 of the Scope of Grant Agreement. The cost of preparation of such Final Financial Report shall be paid in its entirety by the Grantee. The Final Report shall include but not be limited to:

- c) certification that the Project has been completed to the satisfaction of the Grantee and certification by authorized personnel that the Grantee has been discharged from all debts or other obligations in connection with the development of the Project through the payment or setting aside of moneys, that the Project is free from mechanics', laborers', material's, and other liens, and that DOER is free from any and all liabilities in connection with all stages of the Project; and
- d) an accounting of the total cost of the Project.

If the services funded by this Agreement are solicited pursuant to M.G.L. ch. 25A § 11C or § 11I, then the Grantee shall also comply with the monitoring and reporting requirements set forth in DOER's regulations at 225 C.M.R. 10.00 or other applicable regulations.

9. Accounts, Records, Books and Audits

The Grantee agrees that it will:

- a) maintain separate, full and accurate accounts, records and books relative to the Project in such manner and in such detail as DOE may prescribe; all financial records and accounts shall be kept according to generally accepted accounting standards; if the Project is part of a larger development, the Grantee shall require that bids, agreements, subcontracts, and invoices be segregated and shall separately list all Project-related amounts for such services, labor and materials.
- b) grant to the employees, agents, consultants, or representatives of DOE or DOER at all times during normal business hours, and as often as DOE or DOER may require, full and free access to the Project and its accounts, records, and books, and the right to monitor Project operation and performance.
- c) permit DOE, DOER or any accountants or auditors approved by DOE or DOER to make periodic audits, excerpts or transcripts of the accounts and financial records of the Project;
- d) furnish to DOER in a timely manner financial, operating, statistical, monitoring, time sheets, and other reports, statements, and documents whenever requested;
- e) furnish copies of Project-related documents in the possession of the Grantee as DOER may from time to time require.

11. Notice

Any notice required or permitted by this Grant Agreement shall be in writing. The notice shall be addressed to the "Contract Manager" named on the Commonwealth of Massachusetts Standard Contract form, at the "Business and Mailing Address" indicated. Notice given by first class mail, postage pre-paid shall be sufficient. Either party may change its Contract Manager and/or address by providing written notice to the other party.

12. Grantee's Warrant to Keep Facility Open

For Projects involving services or construction at facility(s) owned by or under the control of the Grantee, the Grantee hereby warrants and certifies that there are not present plans to close or sell the facility(s) for which the Funds are designated, and that said facility(s) will not be closed within the next ten years.

13. Interest of Member or Employee of Grantee

No officer, consultant, servant, agent, employee, volunteer, or member of the Grantee shall participate in any decision relating to the Project, affecting his/her financial interest or the interest of any corporation, partnership, or proprietorship in which s/he is directly or indirectly interested. No member, officer, volunteer, agent, servant, or present employee of the Grantee shall have any interest, direct or indirect, in any agreement for property, materials, or services to be acquired by the Grantee or furnished or used in connection with the Project. No officer, servant, agent, employee, volunteer, or member of the Grantee shall be paid for his or her services or receive compensation as such member out of the proceeds of said funds expended or received in connection with the development or administration of the Project.

14. Termination or Suspension of Agreement

DOER may suspend or terminate all or part of this Agreement at any time if, in its sole discretion, it determines that suspension or termination is warranted because of violation of the regulations of DOER or in order to correct misuse or misapplication of funds awarded to the Grantee under this Agreement or due to Grantee's failure to comply with the provisions of 815 CMR §2.00 et seq., where applicable, and this Agreement and/or its Attachments. In any such case, notice (as provided for in this Agreement, Section 11) of the proposed action will be given to the Grantee and its consultants or vendors by DOER through the Commissioner or his designee. In no event shall DOER be liable to the Grantee for any action taken by DOER pursuant to this section.

This Agreement may be canceled by DOER in the event that DOER determines that continuation of the Project is not feasible or would not produce beneficial results commensurate with the expenditure of public funds. Notwithstanding the provision of Section 8, Reports, within thirty (30) days of any such termination, Grantee shall return to DOER any funds not expended for payment of outstanding debts properly incurred by Grantee and approved by DOER prior to the date of termination, and shall deliver to DOER a Final Financial Report concerning all funds expended.

15. Modification

The Grantee must have DOER written approval for modification of the project. The Scope of Grant Award - (Attachment A), the Budget (Attachment B) and all other Attachments or Appendices attached hereto may be modified by DOER staff members with the concurrence of the Grantee upon notification in writing to the Grantee or by DOER's approval of Grantee's prior written request for a Project modification. Neither the Grantee nor DOER shall unreasonably withhold consent to modifications. This provision shall apply to Project changes during delivery of service, feasibility and design phases and to change orders during Project construction.

16. Incorporation

The Grantee shall incorporate the applicable ARRA requirements, and any other applicable requirements of this Agreement and its Attachments, Addenda, and Appendices into all of its agreements for Project work and will require its consultants, subcontractors or vendors to put such terms in any agreement or subcontract the Grantee or its consultants or vendors may make.

17. ARRA Terms

This Project is funded in whole or in part by ARRA. All applicable Federal and Commonwealth ARRA laws, regulations, terms and conditions apply to this Agreement. Specific ARRA requirements are set forth in more detail in Attachments C,D and G.

From time to time, Federal or Commonwealth requirements may change. DOER will notify Grantee of any such changes. Such changes will become a material part of the Agreement upon notice, without the necessity of either party executing an amendment to the Agreement.

Grantee is a Sub-recipient for the purposes of all ARRA requirements.

18. Documents

This Agreement incorporates and makes part hereof certain Attachments and Forms which have been provided and accepted by the parties as part to this Agreement. Copies of such agreed upon Attachments and Forms are attached hereto set forth in their entirety and made part of this Agreement by reference:

- THE COMMONWEALTH STANDARD CONTRACT FORM
- BACKGROUND, GENERAL TERMS
- ATTACHMENT A: SCOPE OF GRANT AWARD
- ATTACHMENT B: BUDGET
- ATTACHMENT C: DOER ARRA/SEP SPECIAL TERMS AND CONDITIONS
- ATTACHMENT D: Commonwealth's Notice of American Recovery and Reinvestment Act (ARRA)
Performance and Reporting Requirements
- ATTACHMENT E: ARRA Whistleblower Flyer
- ATTACHMENT F: ARRA Recovery Jobs Flyer
- ATTACHMENT G: ARRA Funds Procurement and Posting Requirement
- ATTACHMENT H: Davis Bacon Terms
- THE COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT ATTACHMENTS
 - 1. COMMONWEALTH TERMS AND CONDITIONS
 - 2. Grantee AUTHORIZED SIGNATORY LISTING
 - 3. W-9 FORM

III. ATTACHMENT A – SCOPE OF GRANT AWARD

COMMONWEALTH OF MASSACHUSETTS SCOPE OF GRANT AWARD TO AGREEMENT

**By and Between
Massachusetts Department of Energy Resources (DOER)
and
Town of Sudbury**

SCOPE OF GRANT AWARD

1. Overview:

A grant of \$141,864 will be awarded to the Town of Sudbury for a 5.17 kW AC Solar PV system and solar thermal project at the Fairbank Community Center. The system will include a Data Acquisition System (DAS) to monitor system performance and provide monthly reports. Bid responses proposing larger systems within the project budget are encouraged.

Project Location: Fairbank Community Center
40 Fairbank Road
Sudbury, MA 01776

Grantee shall comply with all applicable laws and regulations, including but not limited to the Massachusetts procurement laws listed in Section 3 of this Agreement.

This project is being funded through the US Department of Energy's (DOE) Energy Efficiency and Conservation Block Grant (EECBG) program, with funds appropriated by The American Recovery and Reinvestment Act of 2009, Public Law 111-5. The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, and therefore this was a key criterion in DOER's selection of this project for funding.

2. Contingencies

Grantee must meet, to DOER's satisfaction, certain conditions, set out in detail directly below. For the purposes of this Agreement, only the following number(s) apply(ies): # (1)

- (1) Documentation verifying that the roof for the location of the PV system can structurally support the additional load of the PV system and solar thermal system. This can include a statement signed by a Professional Structural Engineer attesting to this fact.
- (2) Documentation that Massachusetts Historical Commission has determined that the proposed project will have "no adverse effect" on significant historic or archaeological properties.
- (3) Identification of the specific energy conservation measures under the Performance Contract that are to be funded by this grant, if not identified above, and documentation verifying that each measure will pay for itself in energy savings within its normally expected useful life.
- (4) Documentation verifying that all necessary town approvals have been obtained before proceeding with a Performance Contract.

3. Program Schedule:

The following are milestones to ensure timely completion of the project. If the Grantee cannot meet these milestones, they will contact DOER immediately.

- (1) Provide DOER with documentation regarding all contingencies as specified above, if applicable, for grant before receiving funds - April 30th, 2010
- (2) Complete vendor selection process for project - July 31st, 2010
- (3) Complete installation of project – June 30th 2011
- (4) End of grant period – June 30th, 2012

4. Disbursement of Funds:

Initial Disbursement: Fifty percent (50%) of the award, seventy thousand nine hundred thirty two dollars (\$70,932.00), will be disbursed by DOER only after (1) the execution of this Grant Agreement and (2) DOER is satisfied that any contingencies have been met. Should Grantee fail to execute this agreement with DOER or meet any contingencies by April 30th, 2010, it will no longer be eligible for funding under this Agreement.

Second Disbursement: Twenty-five percent (25%) of the award, thirty five thousand four hundred sixty six dollars (\$35,466.00), shall be disbursed upon verification by DOER that more than forty percent (40%) of the Initial Disbursement has been spent and that all reporting requirements and requests have been met. This will include submittal by Grantee to DOER of detailed dated invoices for costs incurred after receipt of this grant.

Final Disbursement: Twenty-five (25%) of the award, thirty five thousand four hundred sixty six dollars (\$35,466.00), shall be disbursed after DOER has determined, after a site visit and review of detailed invoices, that the project is complete, and that all reporting requirements and requests have been met.

Funds cannot be used for reimbursement of any work related to this project performed before the date of execution of this Agreement.

5. Unused funds:

Any funds undisbursed or uncommitted by the Grantee after June 30th 2012 shall be returned to the DOER within 60 days.

6. Administrative Costs:

Administrative costs cannot exceed 10% of the award amount.

7. Publicity

The municipality will coordinate with DOER on all publicity regarding this project.

8. Reporting and Other Required Documentation:

- A. Quarterly and Final Reporting:** For each quarter and final report, the Grantee will submit to DOER the following information in electronic format:
 - Information necessary for DOER to file federal form SF-269, *Financial Status Report* on an annual basis to the United States Department of Energy.
 - Information necessary for DOER to file federal form SF-272, *Federal Cash Transactions Report* on a quarterly basis to the United States Department of Energy.
 - Information necessary for DOER to comply with any and all reporting requirements with regard to the ARRA Section 1512.
- B.** Grantee will be treated as a sub-recipient of federal awards as defined by the Office of Management and Budget Circular A-133, as amended. As a sub-recipient of federal awards, all terms and conditions with regard to the Single Audit Act of 1984, as amended and the Office of the State Comptroller's guidance on sub-recipient activities and actions shall apply.
- C.** If the Grantee receives in aggregate, more than \$500,000 of federal assistance during the Grantee's fiscal year, Grantee shall engage an independent auditor to perform an annual single audit, which shall be completed no later than October 15th, annually as of June 30th. Grantee shall be responsible for implementing all necessary provisions of Circular A-133 as amended and shall

insure proper internal controls over funds received from DOER. Grantee shall meet all so-called cross-cutter provisions of compliance supplements for circular A-133.

- D. Should Grantee engage a third party to manage administrative functions of the program and rely on the internal controls of that third party, the third party shall provide the results of an internal controls audit annually according to the provisions Statements of Auditing Standards No. 70, to the independent auditor, DOER and Grantee.
- E. Grantee shall have a program to combat fraud, waste and abuse of funds and shall incorporate into its program guidance provided by the Office of the State Comptroller.
- F. Funds received under this grant shall be subject to the federal Cash Management Improvement Act of 1990, (US Code Title 31, Chapter 65,) which stipulates that governments that receive federal funds shall minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes. Should DOER become party to a sub-agreement with the Commonwealth's Office of the State Comptroller in conjunction with the Commonwealth's agreement with the United States Treasury under the provisions of the federal Cash Management Improvement Act of 1990, DOER will provide a copy of that sub-agreement to the Grantee.

F. Final report: The final report shall be submitted within 2 months after completion of the final project receiving funding, and shall include a summary of the projects completed, including project locations and capacity. All quarterly and final reports above shall be submitted to:

Meg Lusardi, Deputy Dir Green Communities, Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114
Meg.lusardi@state.ma.us

NOTE: If the services funded by this Agreement are solicited pursuant to M.G.L. ch. 25A § 11C or § 11I, then the Grantee shall also comply with the monitoring and reporting requirements set forth in DOER's regulations at 225 C.M.R. 10.00 or other applicable regulations.

G. Other information related to ARRA, including job reporting: Grantee shall cooperate with DOER to facilitate DOER's compliance with federal and state ARRA job reporting requirements applicable to DOER. In the event that DOER receives further specifications from the Department of Energy (DOE) or the Massachusetts Recovery & Reinvestment Office (MRRO) with respect to reporting requirements, program metrics, job creation/retention, or other information required to be provided to DOE pursuant to ARRA, the Grantee will promptly respond to requests for additional information from DOER. **For purposes of compliance with requirements in Attachment C and D, Grantee is deemed to be a sub-recipient.**

H. Information required pursuant to Attachments: See also Attachments C and D below for additional reporting requirements. For purposes of reporting requirements under Attachment C, Grantee must report vendor name and zip code of vendor headquarters for all vendor payments.

I. Ownership of Reports and Other Required Documentation:

The deliverables listed above shall be owned by the Commonwealth of Massachusetts and treated as public documents. Following the completion of the contract both the Commonwealth and the Grantee retain the right to make further use of the deliverables.

9. Application of Davis-Bacon Act and Related Requirements: For purposes of the Davis-Bacon Act and related wage and hour requirements specified in Attachment C and H, Grantee is responsible for compliance by Grantee's contractors to provide reasonable operational assistance to DOER to ensure compliance by sub-recipients and contractors at all tiers. Grantee shall obtain applicable wage determinations for labor categories relevant to work contemplated under this Agreement and shall provide such determinations with procurements required for this grant.



IV. ATTACHMENT B - BUDGET

Check one: X Initial Budget
 ___ Budget/Account Amendment. Maximum Obligation before this Amendment: \$
 PRIOR MMARS DOCUMENT ID: _____ (for reference - if applicable)
 CURRENT DOC ID: _____

[See Instructions for Additional Guidance on completion. Insert as many additional lines as necessary.]

A	B	C	D	E	F	G	H	I
Budget Fiscal Year	Account	Object Class	Description	Initial Amount / or Amount Prior to Amendment	Indicate Add or Reduce +/-	Amendment Amount	Enter "YES" if Amount is a prior FY budget reduction or a current FY "Carry-in" authorization for Federal Funds	New Amount After Amendment
2010	70069803	P01		\$70,932.00		\$		\$
2011	70069803	P01		\$70,932.00		\$		\$
				\$		\$		\$
				\$		\$		\$
				\$		\$		\$

FISCAL YEAR SUBTOTALS AND TOTAL MAXIMUM OBLIGATION FOR DURATION OF Contract	
FISCAL YEAR: <u> 2010 </u> SUBTOTAL <i>(or New Subtotal if Fiscal Year Subtotal being amended)</i>	\$70,932.00
FISCAL YEAR: <u> 2011 </u> SUBTOTAL <i>(or New Subtotal if Fiscal Year Subtotal being amended)</i>	\$70,932.00
FISCAL YEAR: _____ SUBTOTAL <i>(or New Subtotal if Fiscal Year Subtotal being amended)</i>	\$
FISCAL YEAR: _____ SUBTOTAL <i>(or New Subtotal if Fiscal Year Subtotal being amended)</i>	\$
TOTAL MAXIMUM OBLIGATION FOR DURATION OF Contract <i>(or New Total Maximum Obligation if amended)</i>	\$141,864.00



V. ATTACHMENT C

DOER ARRA/EECBG SPECIAL TERMS AND CONDITIONS

1. GENERAL

This Contract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA” or “Recovery Act”), and other guidance from the federal government implementing ARRA, MA Chapter 30 of the Acts of 2009, and Attachment D, the Commonwealth’s Notice of American Recovery and Reinvestment Act (ARRA) Performance and Reporting Requirements (collectively, “Recovery Act Requirements” or “ARRA Requirements”), and the Scope of Grant Award. Grantee agrees that it will comply with all Contract Terms and Conditions, including all Recovery Act Requirements applicable to this Contract. In the event of a conflict between the terms of the Contract and the Recovery Act Requirements, the provisions of the Recovery Act Requirements shall be controlling. Grantee acknowledges that the ARRA Special Terms and Conditions contained in this Attachment C may require changes due to future revisions of the Recovery Act Requirements, and Grantee agrees that it shall comply with any such changes upon receipt of written notification from the DOER of such changes, and that such changes will become a material part of the Contract without the necessity of either party executing an amendment to the Contract. Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to DOER. DOER may, if necessary, refer to the DOE Award Administrator for guidance.

2. LIMITATIONS ON USE OF FUNDS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.

3. STATEMENT OF FEDERAL STEWARDSHIP

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

4. SITE VISITS

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

5. PUBLICATIONS

- a. Grantee is encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award DE-EE0000737."

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

6. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

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

7. LOBBYING RESTRICTIONS

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

8. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS

a. Unless in conflict with State or local laws, the Grantee must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this agreement, or pursuant to a sub-award to this agreement, do not:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or

2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

b. The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

c. Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering

into agreements with labor organizations.

9. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

Grantee is restricted from taking any action using federal funds for projects under this award that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

DOE has granted a categorical exclusion from NEPA review to all activities proposed in the PON. No further NEPA review is required for the proposed activities. Any projects that go outside of the scope of the PON are conditioned pending further NEPA review.

10. HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Grantee is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places.

Section 110(k) of the NHPA applies to DOE funded activities. Grantee shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Pursuant to a Programmatic Agreement executed by DOE, DOER, and the Massachusetts Historic Commission, DOER shall be responsible for conducting Section 106 reviews. Grantee must submit to DOER all documents that DOER requires to perform the review. DOER may, in its sole discretion, share any submitted documentation with DOE.

Grantee should be aware that the DOER will consider the Grantee in compliance with Section 106 of the NHPA only after the Grantee has submitted adequate background documentation to DOER for its review.

11. WASTE STREAM

The Grantee agrees to manage and dispose of any solid or hazardous waste generated as a result of this project in accordance with applicable state, local, and federal statutes and regulations, including but not limited to 310 CMR 30.00 and 310 CMR 19.00 (including 310 CMR 19.017.)

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

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

13. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

For avoidance of confusion, DOER is the Recipient and Grantee is a sub-recipient for purposes of these Special Terms and Conditions.

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 (A-J) 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. Access to Records

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

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

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

D. Publication

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

Notice of Restriction on Disclosure and Use of Data

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

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

E. 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 mismanagement 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, for specific requirements of this section and prescribed language for the notices.)

F. False Claims Act

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

G. Information in Support of Recovery Act Reporting

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

H. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

I. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – 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.

J. 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.

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

(a) Funds awarded under this Agreement are being provided first to the DOER and then, through this Agreement, to Grantee pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act.) As such, DOER is required to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

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

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

(d) Grantee shall assist DOER in complying with this section. The information provided by the Grantee under this section (the information described in section 1512(c) of the Recovery Act) shall be reported by DOER using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

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

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

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

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

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

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

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

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

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

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(2) and (b)(3) of this section and condition.

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

(i) Electronic dimming ballasts for fluorescent lamps that are capable of operating the lamps below 50% of their rated light output.

(ii) Plug-in CFLs longer than 10 inches

CFLs greater than 10 inches in length have a 4-pin base and are rated from 18 to 27 watts. They are available in a range of color temperatures and are used, for example, in facilities, offices, warehouses and display cases. Lengths range from 10.5 in (266.7 mm) to 22.5 in (571.5 mm), and rated life ranges from 10,000 to 20,000 hours.

(iii) Traffic light fixtures

LED traffic lights, arrows, and crosswalk signals covers the LED lights and any adjacent wires and electronic parts necessary for the functionality of the lights themselves; but NOT the metal or plastic fixtures (also referred to as the “housing” or “shell”).

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

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

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

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

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

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

Unit of measure;

(C) Quantity; (D) Cost;

(E) Time of delivery or availability; (F)

Location of the project;

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

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

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

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

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

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

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

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

Foreign and Domestic Items Cost Comparison

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

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

Include other applicable supporting information.

*Include all delivery costs to the construction site.

In absence of a waiver from DOE, Grantee shall ensure that only domestic iron, steel, and manufactured goods are used in performing the work funded in whole or part with this award. Should DOE grant any additional categorical waivers of Buy American requirements, DOER will notify Grantee. Any such categorical waivers will become a material part of the Contract without the necessity of either party executing an amendment to the Contract.

17. WAGE RATE REQUIREMENTS

(a) All laborers and mechanics employed by the Contractor or subcontractors pursuant to this Contract must receive wages that are at least as high as those specified in the prevailing wage standards set forth for laborers and mechanics on projects of a character similar in their locality as determined by the United States Secretary of Labor, or Massachusetts Prevailing Wages, whichever are higher. Such wages for Massachusetts Prevailing Wage can be obtained at www.mass.gov/dos. The contractor or subcontractor must register on this site to obtain the current Massachusetts prevailing wage rates. Such wages for Davis-Bacon are found at: www.dol.gov. Be advised that these rates must be checked and updated (if necessary) at the time of the contract execution.

Additional questions resources may be found at:

http://apps1.eere.energy.gov/state_energy_program/davis_bacon_faqs.cfm

(b) The Grantee, Contractor and any subcontractors shall incorporate the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) into any contracts, funded in whole or in part by this Grant Award, that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating). A link to these clauses may be found at: http://www.dol.gov/dol/allcfr/Title_29/Part_5/29CFR5.5.htm

(c) Additional Davis-Bacon requirements that pertain to this Agreement are set out in ATTACHMENT H.

(d) Grantee/sub-grantees and contractors/subcontractors on projects funded or assisted in whole or part by ARRA funds shall maintain payrolls and basic records relating to payroll during the course of the project and preserve them for a period of **three years** thereafter for all laborers and mechanics working on the project, or as designated in the grant

document. Grantee/sub-grantees and contractors/subcontractors must also ensure that all laborers and mechanics on a project funded or assisted in whole or part with ARRA funds are **paid on a weekly basis** and **must submit weekly certified payroll records** to the contracting and administering agency.

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

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

(b) Grantee agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) to the extent required of Grantee by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

VI. ATTACHMENT D:

Commonwealth's Notice of American Recovery and Reinvestment Act (ARRA) Performance and Reporting Requirement

For avoidance of confusion, DOER is the Recipient and Grantee is a Sub-recipient for purposes of this Attachment D. Awardees of funding selected by Grantee are Contractors or subcontractors, not Vendors, for purposes of this Attachment D.

TERMS FOR ALL ARRA CONTRACTORS (SUB-RECIPIENTS OR VENDORS)

This Contract Attachment is being provided to all Contract recipients of ARRA funds to ensure that you have notice of key requirements upon which the receipt of ARRA funding is conditioned. You will be informed by your contracting Department if you will be receiving ARRA funds and whether under each contract you will be considered a "Sub-recipient" or a "Vendor". ARRA funding is considered "one-time" funding and will not be continued or replaced with appropriated or other funding once the ARRA contract portions are expended. These terms are already incorporated by reference through the federal grant or contract award from your contracting Department and are in addition to any performance, reporting or other terms already provided under your award and contract. *Documentation of actual receipt of this attachment by the contractor contract manager or an authorized signatory shall be sufficient to bind the contractor to the terms of this attachment.*

RECORDKEEPING AND ACCESS TO RECORDS

Contractor and subcontractor recipients of ARRA funds, must maintain records, books, files and other data as specified in a Contract and in such detail to support compliance with contract terms, attainment of performance success criteria or performance measurements and successful completion of all contract performance requirements to properly substantiate claims for payment and that identify adequately the use of ARRA funds, which must be maintained for seven (7) years beginning the day after the final payment of ARRA funds or after the resolution of any litigation, claim, negotiation, audit or other inquiry involving the Contract. Transparency requirements under state and federal law (including Section 902) require a contractor to provide access to all such records and data to the contracting Department, the Executive Office for Administration and Finance, the Offices of the Attorney General, State Auditor, Inspector General or any state or federal compliance officer or inspector general assigned to ARRA reviews. Access to such records, including on-site reviews, interviews of officers and employees, and reproduction of such records at a reasonable expense, shall be provided during the Contractor's regular business hours and upon reasonable prior notice. **All contractors, whether deemed sub-recipients or vendors, must be prepared to provide any documents, records, data or other proof of performance, or related to their business activities that are paid for with ARRA funds.**

ENFORCEABILITY

In addition to all other remedies available to the Commonwealth under applicable state and federal laws, in the event a Contractor or their subcontractors fail to comply with contract terms or with applicable federal and state requirements governing the use of ARRA funding, the Commonwealth may withhold or suspend awards or recover any funds awarded under a contract following an audit by the Department.

FALSE CLAIMS OR PUBLIC CONCERNS

A Contractor shall promptly refer to its contracting Department any public concerns raised to the Contractor about the use of ARRA funds (Section 1514), or credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim (e.g., falsification of time sheets, reports or invoices) under the False Claims Act or has committed a criminal or civil violation pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds. The Contractor acknowledges that Section 1865 of ARRA, amends Section 257 of the Trade Act of 1974 increasing false claims penalties to allow imprisonment up to 2 years, or fines or both.

REQUIRED JOB POSTINGS at www.mass.gov/jobquest

Since the primary purpose of ARRA is retention and creation of new jobs, the Governor's Economic Recovery Mobilization Act requires organizations and entities receiving full or partial ARRA funding to post job openings at JobQuest (the state's job bank) at www.mass.gov/jobquest. This website has instructions for posting jobs and managing job orders. A Business Service Representative located at one of the 37 Massachusetts One-Stop Career Centers statewide (at www.mass.gov/careercenters or the Help Desk at 1-888-578-6599) can assist you with posting job openings and how to recruit applicants.

APPRENTICE REQUIREMENT

The Governor's Economic Recovery Mobilization Act requires 20% of the work hours on all ARRA funded public works projects with a contract award over \$1 million to be performed by apprentices in bona fide Division of Apprenticeship Training (DAT) approved apprentice training program. This requirement applies to hourly wage employees employed on the project site, employed by the contractor or a subcontractor and subject to prevailing wage. Contact the contracting Department issuing ARRA funds and DAT at 617-626-5409 for implementation assistance.

EMPLOYEE WHISTLEBLOWER RIGHT AND PROTECTIONS

Section 1553 of ARRA provides protections for employees who make specific disclosures (whistleblowers) about uses of ARRA funds. Any contractor employer receiving ARRA funds must print and post the following poster or a similar notice to employees of section 1553 and

shall include the substance of this clause in all subcontracts. <http://www.oig.dol.gov/recovery/Section1553WhistleblowerProvisions.pdf>. Whistleblower information can be found at: <http://www.recovery.gov/CONTACT/REPORTFRAUD/Pages/WhistleBlowerInformation.aspx>.

SUB-RECIPIENT TERMS

A sub-recipient is a non-federal entity that expends Federal awards received from another entity to carry out a Federal program but does not include an individual who is a beneficiary of such a program. Specifically, sub-recipients are non-Federal entities that are awarded Recovery funding through a legal instrument from the prime recipient to support the performance of any portion of the substantive project or program for which the prime recipient received the Recovery funding. Additionally, the terms and conditions of the Federal award are carried forward to the sub-recipient. Sub-recipient activities will be monitored as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved. Sub-recipients receiving in the aggregate, \$500,000 or more in Federal awards during the sub-recipient's fiscal year must meet the audit requirements for that fiscal year, and are subject to the Single Audit. In addition to all of the OMB A-133 requirements, sub-awards made from the federal stimulus funds (ARRA) are subject to Buy-American and compliance with the Davis-Bacon Act of 1931. Under ARRA, these requirements pass through to sub-recipients who may have previously been exempt from compliance.

ADDITIONAL SUB-RECIPIENT REPORTING REQUIREMENTS

In addition to general performance reporting under the Contract, OMB requirements for ARRA transparency and reporting are also passed down to sub-recipients. The Commonwealth as prime must assure that the following is provided and subsequently recorded in the state's account system, MMARS:

- The DUNS# of the sub-recipient, their legal name, address and type (Prime will obtain from VCUST)
 - The sub-award number (Prime will obtain from encumbrance document ID)
 - The total value of the sub-award/contract (Prime will obtain from contract document recorded on the encumbrance)
 - The sub-award date (Prime will obtain from date on the encumbrance)
 - The sub-award grant period (Prime will obtain from service begin and end dates on the encumbrance)
 - The primary performance location/area of benefit (Prime will obtain from the Location Code recorded on the encumbrance and/or payment request transactions)
 - Sub-recipients will be required to report all vendor payments they make with ARRA funds. Detail for these payments must include either the payee vendor DUNS number OR the vendor name and the zip code of the vendor headquarters (**Sub-recipient will be notified by Prime on how to report**)
 - Sub-recipients must segregate ARRA funds from other sources of funding and shall not co-mingle ARRA funds with other funds or use ARRA funds for any purpose other than for approved ARRA purposes outlined in a contract.
 - Sub-recipients may be also required to report the names and total compensation for the five most highly compensated officers in their organization if:
 - (1) the recipient in its preceding fiscal year received— (a) 80 percent or more of its annual gross revenues in Federal awards; and (b) \$25,000,000 or more in annual gross revenues from Federal awards; and
 - (2) the public does not have access to information about the compensation of the senior executives of the entity 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 [26 USC § 6104].
- “Total compensation” means the cash and noncash dollar value earned by the executives during the sub-recipient’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):
- (i). Salary and bonus.
 - (ii). Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R.
 - (iii). Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - (iv). Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - (v). Above-market earnings on deferred compensation which are not tax qualified.
 - (vi). Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

(Sub-recipient will be notified by Prime on how to report on top five highly compensated officers.)

VENDOR TERMS

A Vendor is defined as a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a Federal program. Prime recipients or sub-recipients may purchase goods or services needed to carry out the project or program from vendors. Vendors are not awarded funds by the same means as sub-recipients and are not subject to the terms and conditions of the Federal financial assistance award. As outlined above, vendor payments will be reported with the vendor DUNS number OR the vendor name and the zip code of the vendor headquarters. In addition to any other requirements, sub-awards made to vendors from ARRA funds are subject to Buy-American requirements for construction material Section 1605 requiring that ARRA projects for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel, and manufactured goods in the project unless one of the specified exemptions applies, in a manner consistent with U.S. obligations under international agreements. Further Section 1606 of the Recovery Act requires compliance with the Davis-Bacon Act of 1931 that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part with ARRA funds 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. These requirements pass through to vendors and their sub-contractors, if any, who may have previously been exempt from compliance.

Know Your Rights Under the Recovery Act!

Did you know?

The American Recovery and Reinvestment Act of 2009¹ provides protections for certain employees of non-federal employers who make specified disclosures relating to possible fraud, waste and/or abuse of Recovery Act funds.

Who is protected?

Employees of non-federal employers receiving recovery funds. This includes State and local governments, contractors, subcontractors, grantees or professional membership organizations acting in the interest of recovery fund recipients.

How are Whistleblowers Protected?

You cannot be discharged, demoted or otherwise discriminated against as a reprisal for making a protected disclosure.

What types of disclosures are protected?

The disclosure must be made by the employee to the Recovery 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, a court or grand jury, or the head of a federal agency or his/her representatives.

The disclosure must involve information that the employee believes is evidence of:

- gross mismanagement of an agency contract or grant relating to recovery funds;
- a gross waste of recovery funds;
- a substantial and specific danger to public health or safety related to the implementation or use of recovery funds;
- an abuse of authority related to the implementation or use of recovery funds; or
- a violation of law, rule, or regulation related to an agency contract or grant awarded or issued relating to recovery funds.

Take Action!

Log on to Recovery.gov for more information about your rights and details on how to report at www.recovery.gov.

¹ Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5



How to Post Recovery Jobs



Two easy and convenient ways to post job openings

1. Post Jobs Online via JobQuest Employer Job Posting System

JobQuest is an online system that connects employers with job seekers

1. Go to www.mass.gov/jobquest.
2. If you're a First Time User, you must first register to access JobQuest using your Federal Employer Identification Number. You'll be asked to select your username and password for accessing JobQuest.
3. When posting Recovery-funded job openings, check the box for Recovery Jobs and enter your company's DUNS number and the name and ID of the Recovery Project you are working on.



Step-by-step instructions for posting jobs and managing your job orders are provided on JobQuest. If you need assistance, please contact the Help Desk at **1-888-578-6599** or email MOSES@detma.org.

2. Post Jobs with Your Local Business Services Representative (BSR)

BSRs are located at Massachusetts One-Stop Career Centers across the Commonwealth. To find a Career Center near you, go to www.mass.gov/careercenters or call **1-877-US 2 JOBS (1-877-872-5627)**.



Your BSR will meet with you to:

1. Help you post recovery job openings on JobQuest
2. Develop a recruitment plan to help you find qualified candidates
3. Additionally, explain the wide range of business programs and services offered by your local Career Center and the Commonwealth and how to access them including:
 - hosting career fairs and on-site recruitments
 - accessing workforce training funds and labor market information
 - connecting with the state's business development, counseling and support services



Commonwealth of Massachusetts
Deval L. Patrick, Governor
Timothy P. Murray, Lt. Governor

Executive Office of Labor and Workforce Development
Suzanne M. Bump, Secretary

IX. ATTACHMENT G: ARRA Funds Procurement and Posting Requirement

MEMORANDUM

To: Commonwealth Secretariats, Department Heads, Chief Financial Officers, General Counsels

From: Leslie A. Kirwan, Secretary for Administration and Finance
Ellen Bickelman, State Purchasing Agent, Operational Services Division

Date: July 16, 2009

Re: Procurement and Grant Posting and Record Requirements for American Recovery and Reinvestment Act (ARRA) Funds

The purpose of this memorandum is to provide posting and public notice requirements for procurements and grants, including the resulting contracts and grant awards, funded with American Recovery and Reinvestment Act (ARRA) funds, also referred to as “federal stimulus” funds.

To meet Governor Patrick’s commitment to full transparency, these requirements apply specifically to projects funded with ARRA funds received directly from the Commonwealth. However, to promote single-site transparency, all public entities are strongly encouraged to follow these guidelines by posting ARRA projects, funded directly from the Federal Government, on Comm-PASS as well.

Effective immediately, all public entities in the Commonwealth, including but not limited to Executive and Non-Executive departments, municipalities, counties, authorities and non-profit human service providers that issue a competitive bid or offer a grant that includes any amount of ARRA funds directly from the Commonwealth must post all procurement/grant and contract/grant award records at www.comm-pass.com (Comm-PASS), the Commonwealth’s free, publicly accessible Internet-based procurement system administered by the Commonwealth’s central procurement office, the Operational Services Division.

This posting requirement applies to all procurement and grant documents which are typically created or received during three phases:

1. Bid/Offer including Announcements, Requests for Qualifications, Requests for Information, Requests for Proposals/Responses, Requests for Grant Applications or Requests for Quote;
2. Response/Application including but not limited to the list of Responding Bidders/Grant Applicants, Bidder Responses, the list of Awarded Contractors/Grantees; and,
3. Contract/Award including but not limited to Forms and Terms, Awarded Contractor/Grant Recipient information, Award Values.

To assist bidders and the general public in locating solicitations and contracts with ARRA funds, effective immediately, all qualified records posted on Comm-PASS must include the Additional Keyword terms “ARRA” and “federal stimulus.”

OSD has enhanced Comm-PASS functionality to provide high visibility for all ARRA-funded projects. This new functionality consists of a new “Fed Stimulus” tab on the Comm-PASS home page and a new “Contains Federal Stimulus” checkbox for solicitations and contracts. ARRA records must include the Additional Keyword terms (“ARRA” and “federal stimulus”) and the selected “Contains Federal Stimulus” checkbox.

Recipients of ARRA funds administered by the Commonwealth of Massachusetts who conduct procurements or grants must post the documents in their [procurement files, as defined in the OSD Procurement Information Center \(PIC\)](#), on Comm-PASS, as specified below:

1. No later than one (1) business day after Solicitation Close Date, post a list of all responding parties;
2. No later than five (5) business days after notification in writing to all respondents of award disposition, post a list of the awarded party or parties;
3. No later than ten (10) business days after the Solicitation status "Closed-Contract Awarded", post the awarded parties’ bid response content in the Solicitation and post the stand-alone Contract record;
4. Within the requirements of the Massachusetts Public Records Laws (MGL c. 4, § 7, cl. 26; MGL c. 66, § 10), post any content that has been requested under public record law instead of providing paper copies or scheduling in-person review of content; and,
5. No later than three (3) months after the procurement is awarded, post all remaining documents in the procurement file except those which are subject to exemption under law, executive order, regulation or policy

(see below).

This guidance does not preclude any recipient from posting all procurement/grant file information as soon as possible after the Solicitation Close Date within the parameters of procurement/grant, public record, security and public safety laws, executive orders, regulations, and policies.

The process for posting bidder response or grant applicant information on Comm-PASS can be streamlined by requiring that either:

1. submission content be uploaded by bidders through online submission functionality in Comm-PASS that is available to bidders at a modest charge; or,
2. any paper submission requirement is accompanied by a complete, electronic media copy via CD or USB flash drive.

Option 1 above ensures that all documents posted on Comm-PASS meet public record retention guidelines and eliminates the need to create paper copies, except for contract forms executed in wet ink after an award is determined. Storage on Comm-PASS is free and records are maintained for a minimum of nine years before any offline archiving is even considered. Online posting and storage can substantially reduce your organization's administrative costs and efforts associated with public record retention and archiving.

Option 2 above may streamline posting on Comm-PASS, but the paper record is the official public record under public record retention guidelines.

Procurement/grant records may include information which should be redacted prior to posting under one of several laws, executive orders, regulations or policies including but not limited to:

- a. Health Insurance Portability and Accountability Act (HIPAA) (45 CFR Parts 160, 162, and 164);
- b. Massachusetts Public Record laws (MGL c. 4, § 7, cl. 26; MGL c. 66, § 10);
- c. Fair Information Practices Act (FIPA) (MGL 66A); or,
- d. Executive Order 504.

To indicate redaction of information under an applicable law, executive order, regulation or policy, Issuers must post a document titled Document Name-Redacted and a brief description which classifies the redacted content. Information may be classified as:

1. Security-Sensitive Information: procurement officers should avoid widespread public disclosure of specific security solutions, building plans depicting locations of security cameras, computer network diagrams, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth. Such information is generally exempt from public disclosure under the Commonwealth's public records law and should be safeguarded by public agencies when possible. See MGL c. 4, § 7, cl. 26(n).; or,
2. Personal/Private Information: personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A, including personal names, personal contact information, personal residence addresses as in resumes or references offered by bidders, social security, financial account information, drivers' license numbers; or,
3. Other Information exempt from disclosure under other provisions of the Public Records Laws, MGL c. 4, § 7, cl. 26.

Additional guidance for Comm-PASS posting requirements can be found at [Comm-PASS Guidance](#).

Please note: If you have already issued procurements for projects funded with ARRA funding received directly from the Commonwealth using a process other than what is required in this letter, please send an email to the Comm-PASS Help Desk at comm-pass@state.ma.us using the Subject "ARRA Procurement: Retroactive Posting Needed" to obtain guidance for meeting these requirements.

Many Massachusetts public entities are familiar with Comm-PASS and have a BuySmart account that allows them to post solicitations and create contracts at no charge.

If your organization's own website supports posting capabilities, please consider that posting on Comm-PASS can help create a one-stop source of free information for all ARRA-funded projects. If your organization's website does

not have posting capabilities, remember that Comm-PASS access is available at no cost to Massachusetts public entities.

To join Comm-PASS, a signatory authority must request a BuySmart account by selecting the "JOIN" option from the Comm-PASS main navigation bar and following the BuySmart links. If Commonwealth public entities have questions regarding Comm-PASS BuySmart Membership or Comm-PASS navigation, please send an email to comm-pass@state.ma.us for prompt attention.

For public entities located in Massachusetts communities with limited or no broadband access, please contact the Comm-PASS Team as soon as possible to establish an alternate mechanism for posting ARRA solicitations and contracts on Comm-PASS as required by this memo.

You may reach the team by telephone Monday through Friday from 8:00 AM to 5:00 PM at 888-MA-STATE or by mail at:

Comm-PASS Team
Operational Services Division
Room 1017
One Ashburton Place
Boston, MA 02108
Attn: No Broadband Access

Thank you.

X. ATTACHMENT H: Davis Bacon Terms

1. DAVIS-BACON ACT REQUIREMENTS

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award, in this case, DOER.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations), in this case, Grantee.

Davis-Bacon Act

(a) Definition.--"Site of the work"--

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the award or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively

or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

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

(ii) The classification is utilized in the area by the construction industry.

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

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

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

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

- XI. THE COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT ATTACHMENTS
1. COMMONWEALTH TERMS AND CONDITIONS
 2. Grantee AUTHORIZED SIGNATORY LISTING
 3. W-9 FORM



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