



AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009



**STATE ENERGY EFFICIENT APPLIANCE
REBATE PROGRAM**

REQUEST FOR PROPOSALS

RFP #: EN02172010
Publish Date: January, 25, 2010
Due Date: February 17, 2010

**Mississippi Development Authority – Energy Division
Request for Proposal for a Service Provider to Administer the
State Energy Efficient Appliance Rebate Program**

I. OVERVIEW

The Mississippi Development Authority–Energy Division (MDA-ED) requests the submission of proposals from qualified Rebate Service Providers for the development, implementation, and execution of the State Energy Efficient Appliance Rebate Program (SEEARP). The purpose of SEEARP is to save energy and stimulate the economy by encouraging consumers to replace old, inefficient appliances with new, more energy efficient models. This program is funded by the American Recovery and Reinvestment Act of 2009 (ARRA).

Congress authorized SEEARP through the Energy Policy Act of 2005 (EPACT, Section 124). The Energy Independence and Security Act of 2007 (EISA) amended the program to include high efficiency products for cold weather climates, and funding was provided through ARRA. \$296,000,000 has been made available nationwide using population formulas, resulting in a \$2,820,000 allocation for Mississippi. MDA-ED is the prime recipient of funds for SEEARP and will implement the program according to U.S. Department of Energy (DOE) guidelines. Information about the program has been made available on the web at: http://apps1.eere.energy.gov/states/appliance_rebate.cfm. MDA-ED has determined that subcontracting this service to a specialized rebate processing firm with experience in this field is in the best interest of the program and the State of Mississippi.

This Request for Proposals (RFP) will result in one contract with a Rebate Service Provider that will be fully responsible for program execution. This will include garnering retailer and contractor participation, managing outreach efforts, qualifying, processing, and issuing payments for individual consumer rebates, tracking program progress and reporting to MDA-ED, DOE and partners, and program marketing and promotion. If the Service Provider chooses to use a subcontractor, the subcontractor may not administer a majority of the funds. The MDA-ED reserves the right to approve or reject subcontracts.

Proposers may not obligate funds, incur reimbursable expenses, or otherwise implement program services prior to execution of a contract with MDA-ED.

The Proposer's RFP response shall include at a minimum the following required services:

- Save energy by encouraging consumers to purchase energy efficient appliances through materials and services that advertise the appliances and their benefits to the consumer;
- Prepare for program launch quickly;
- Make rebates available to consumers statewide;
- Work with MDA-ED to develop and print promotional materials and rebate application forms;
- Work with MDA-ED to develop a common website interface;
- Participate in webinars hosted by MDA-ED for retailers and stakeholders;

- Provide rebate applications for disbursement at retail locations, through website applications, and also through the U.S. Mail;
- Establish and operate a customer call center in the United States of America (U.S.), staffed with live operators, to answer program questions during normal business hours according to Central Standard Time;
- Provide a dedicated toll-free number for the U.S. call center;
- Provide a mailing address for rebate applications;
- Download product information from sites to be provided by MDA-ED on a weekly basis to ensure that rebates are provided for all qualified products;
- Accept and verify rebate protocols;
- Provide overall rebate check processing and payment management with minimal MDA-ED day-to-day oversight, ensuring accurate and timely delivery to applicants;
- Ensure that rebate checks are mailed to applicants within 30–45 calendar days of receiving necessary information;
- Establish a bank account separate and apart from the Proposer’s other company account(s) strictly for processing rebate receipts and disbursements; all of the funds on deposit in the account at any time shall be fully insured by the FDIC;
- Develop a real-time, on demand data collection and reporting system that will accurately collect, aggregate, summarize and deliver the required data to MDA-ED;
- Propose procedures designed to eliminate or reduce potential fraud and the risk of any unsatisfactory outcome of the program;
- Immediately report to MDA-ED any fraud detected or suspected;
- Enhance existing utility rebate programs by leveraging ENERGY STAR national partner relationships;
- Keep administrative costs low;
- Invoice MDA-ED for reimbursement of rebate funds on a weekly basis;
- Provide monthly reports to MDA-ED that include the following minimum information:
 - Application Activity (including quantity)
 - Tracking Information
 - Project Issues
 - Issue Resolutions
 - Customer Service Logs
 - Budget Updates
 - Retailer Participation
 - Other, as determined by MDA-ED
- Ensure tracking and accountability in accordance with MDA-ED requirements;
- Promote the recycling of replaced appliances; and
- Perform additional SEEARP services as required.

Eligible Proposers

Eligible Proposers under this RFP include professional management companies with the capacity to handle a large-scale, statewide rebate program which will rebate multiple products with different dollar amounts associated with each product. Organizational information, including previous experience with similar programs and references for those programs will be required.

Compensation for services will be in the form of a firm fixed price contract.

Contract Term

The MDA-ED anticipates awarding a contract with the successful Rebate Service Provider in April 2010, and concluding after close-out and final reporting by the Rebate Service Provider after the depletion of federal funds for this program, or on February 17, 2012, whichever comes first.

Available Funds

In December 2009, MDA-ED received a Federal grant of \$2,820,000 to implement SEEARP. Of those funds, \$282,000 has been approved by DOE for administration of the program. The balance must be used for rebates to eligible consumers. MDA-ED will in no way be liable for commitments that exceed the level of federal support for rebates, and will not compensate the Rebate Service Provider any administration costs exceeding \$282,000.

Fidelity Bond and Insurance Requirements

The successful Proposer, at the time of final contract execution, must provide proof to MDA-ED of fidelity bond coverage in amount of \$1,000,000. The Proposer must also obtain and provide proof of general liability insurance in the amount of \$1,000,000 and automobile liability and workers' compensation coverage (refer to Mississippi WC laws). The insurance company covering the fidelity bond must be licensed to conduct business in the State of Mississippi. The contractor shall name the State of Mississippi as an additional insured on all policies resulting from this solicitation and subsequent contract.

Qualified Appliances & Rebate Levels

SEEARP is to be designed to provide an incentive for consumers to replace existing appliances with a qualifying energy efficient appliance. MDA-ED has selected the following residential appliances and rebate amounts for the program:

Products to be Rebated	Rebate Level (\$)	Targeted Quantity	Total Cost	Targeted # of Products Recycled
Dishwashers <=307 kWh/yr & <=5.0 gal p/cycle (2011 specs)	\$100	3,000	\$300,000	N/A
Dishwashers <=324 kWh/year & <=5.8 gal p/cycle (2009 specs)	\$75	1,500	\$112,500	N/A
Room Air Conditioners EER greater ~ 10% > federal standard (lar>9.4, sml>=10.7)	\$60	1,550	\$93,000	1,000
Refrigerators 20% better than federal standards **This includes compact and	\$75	3,000	\$225,000	1,500

miniature refrigerators**				
Clothes Washers (2.0MEF/6.0 WF) (2011)	\$150	1,550	\$232,500	N/A
Clothes Washers (1.8 MEF/7.5 WF) (2009)	\$100	1,550	\$155,000	N/A
Freezers 10% better than federal (Energy Star branded)	\$50	1,550	\$77,500	1,000
Gas Storage Water Heaters (EF of .62)	\$100	2,500	\$250,000	N/A
Tankless Water Heaters (.82 EF minimum)	\$150	2,500	\$375,000	N/A
Heat Pump Water Heaters (EF 2.0>)	\$150	2,500	\$375,000	N/A
Air Source Heat Pumps >= 8.2 HSPF/ >=14.5 SEER/ >=12 EER* for split systems; >= 8.0 HSPF/ >=14 SEER/ >=11 EER* for single package equipment including gas/electric package units	\$250	500	\$125,000	N/A
Geothermal Heat Pumps	\$750	122	\$91,500	N/A
Central Air Conditioners >=14.5 SEER/ >=12 EER* for split systems; >=14 SEER/ >=11 EER* for single package equipment including gas/electric package units	\$100	501	\$50,100	N/A
Gas Furnaces AFUE>=90%	\$150	506	\$75,900	N/A
Total Rebates		22,829	\$2,538,000	3,500

Replacement and Recycling

Proposers should specify how they intend to comply with the DOE requirement that these rebates go to customers who are replacing existing appliances with new, more energy efficient appliances. In addition, Proposers are encouraged to include information on how to communicate with consumers about proper recycling of old appliances, including information on the proper disposal of hazardous refrigerants and other possibly hazardous materials contained within the appliances. DOE encourages product recycling, particularly for refrigerators, freezers, and room air conditioners. The Mississippi Department of Environmental Quality (MDEQ) will complete an appliance recycling information component on its website, www.deq.state.ms.us, in early 2010. The MDA Stimulus website, www.stimulus.mississippi.org, will link to the MDEQ site. This tool will allow consumers to find the nearest recycling location.

Reporting

MDA-ED is required to submit a minimum of three separate quarterly reports for each quarter of the program period and two one-time reports for SEEARP. The Rebate Service Provider will be required to provide all information required for these reports in coordination with MDA-ED. It is likely that MDA-ED will require information submitted on a monthly basis in preparation for these reports. The reports will be, at a minimum, the following:

1. Recovery Act Reports to the U.S. Office of Management and Budget (OMB)

These reports are due quarterly by the 5th day of the month following the end of a quarter and include information such as jobs created and retained, funds expended, vendor payments, and project description and status.

2. Program Financial Reports to DOE

These reports are due quarterly by the 5th day of the month following the end of quarter and include information pertinent to the financial status of the program.

3. Program Progress Reports to DOE

These reports are due quarterly by the 5th day following the end of a quarter. The following minimum data must be provided:

- Number of rebate payments issued
- Total value of rebate payments
- Number of appliances hauled away
- Haul-away verification
- Number of appliances recycled
- Recycling verification

4. Special Progress Report

This report will be due as determined by MDA-ED. This is a detailed extract from the rebate processing database, to be developed and maintained by the Rebate Service Provider that lists each individual rebate transaction, absent any consumer or retailer information (i.e., no addresses or personal information). The following will be required:

- Make
- Model number
- Purchase price
- Date purchased (or date rebate paid)
- SEEARP rebate amount paid

Optional data includes:

- Incentives from other sources (utility or other rebates paid, if known)
- Efficiency of existing product that was replaced (model number or efficiency rating of replaced appliance)

5. Final Progress Report

This report will be due as determined by MDA-ED, but no later than February 1, 2012. The report will include the following:

- Rebate summary
- Incremental benefits summary
- Appliance disposal summary
- Rebate database extract (the final report of the information provided in the Special Progress Report covering the entire program period)

ARRA Requirements

The Proposer must agree to comply with all terms and conditions in the American Recovery and Reinvestment Act of 2009 to include governance, accountability, transparency, data collections and resources as specified in the Act and DOE guidance. MDA-ED will ensure full compliance with those provisions.

If the Proposer has multiple programs running concurrently, please note that all tracking and reporting of ARRA funds must be separate to meet the reporting requirements of the Recovery Act and related guidance. Separate financial records will also be required, and all jobs created or retained for organizations with multiple ARRA awards must be reported on a percentage basis as to the time spent by that individual on each program.

Federal Registration Requirements

The Proposer must meet the following two federal registration requirements:

- 1) Obtain a Dun & Bradstreet Data Universal Numbering System (DUNS) number. Visit: <http://fedgov.dnb.com/webform> or call 1-866-705-5711 and follow the prompts.
- 2) Registration in the Central Contractor Registry (CCR). Visit: www.ccr.gov. All information must be current and include ZIP code+4.

II. PROPOSAL INSTRUCTIONS

The proposal narrative must provide all the information requested below, in the order listed. The narrative should not exceed 20 pages and must be submitted using Times New Roman, 12 point font. Attachments do not count toward the 20 page limit.

A. Organizational Experience

1) Organizational Overview

- a. Provide a description of the Proposer's organization. Include primary place of business, purpose, history (including how long the organization has been in business), and an organizational chart. Provide information on whether the organization is minority-, woman-, or veteran-owned and whether or not the organization has employees or offices located within the State of Mississippi.
- b. Describe in detail the current services provided by the Proposer's organization.
- c. Provide a description of the organization and personnel's experience in providing similar services and expertise needed to manage SEEARP. Websites, photos, sample checks, reports and/or other collateral materials are encouraged and will not count toward the 20 page limit.
- d. Describe experience with fraud prevention and mitigation.

2) Partnerships and Subcontract Agreements

- a. Describe any subcontract work that could be needed and the work that the subcontractors will perform. List the subcontractors to be used, if available, and resumes and biographical sketches for each.
- b. Explain your view of the roles of utilities, retailers and other partner organizations in successful implementation of SEEARP, and the role of the Proposer in coordinating these roles.

B. Implementation Strategy

3) Proposed Implementation Strategy

- a. Describe the milestones and tasks of your organization and partners during the first six months of award, including specific detail related to the amount of time required to fully develop and launch the program after contract execution.
- b. Describe your role in publicizing the program to retailers, utilities, and other partner organizations.
- c. Describe the rebate process from the point a customer enters the retailer.
- d. Describe the rebate processing system once the purchase is made.
- e. Describe how the rebate will be processed within 30-45 days.

- f. Describe the proposed tracking system in detail.
- g. Describe the fraud prevention and detection strategy. Include a personnel flow chart of how discovered waste, fraud, or abuse will be handled. (Example: Project Manager to Supervisor, Supervisor to MDA-ED Project Manager, etc.). Include names and titles where possible.
- h. Describe the estimated time needed between execution of a contract and the launching of the program.
- i. Describe your ability to process extreme volume variations on a daily and weekly basis.
- j. Describe how you will staff phone and email inquiries from consumers with questions about the status of their check. Describe how you will handle non-English speaking consumers.
- k. Describe how to maximize the total available funds to achieve energy savings on a per-program dollar spent basis.

4) Program Marketing and Promotion Plan

- a. Describe how your firm could assist in the marketing of this program in order to give everyone statewide an opportunity to participate.
- b. Provide a list of trade organizations, local community groups, or other means by which information could be effectively communicated, giving particular focus to low- to moderate-income consumers.
- c. Describe how messages will be communicated when funds are nearly depleted.
- d. Describe how this plan will quickly disburse funds to the public, providing economic stimulus.

5) Replacement and Recycling Plans

- a. Specify how SEEARP can comply with DOE's directive that funds be used for replacement appliances only (all appliances must be replacing an older, inefficient appliance).
- b. Describe how SEEARP can additionally comply with the SEEARP intent to take inefficient products "off the grid". This can be through the rebate materials, recycling promotion, or other promotional materials.
- c. Describe the role of SEEARP in the actual recycling, including the recycling of hazardous materials or liquids found in appliances.
- d. Describe the roles of any possible partners and the role of the Proposer in recruitment of and communication with these partners.

C. Budget

Administrative costs for this program are capped at \$282,000. Any response submitted to this RFP with an estimated total cost (price) in excess of the cap, will automatically be rejected as non-responsive.

6) Budget Detail Package

- a. Provide a detailed breakdown on the proposed rebate processing fee listed by appliance type to be rebated and proposed (see table on pages 3 & 4), and how the funds will be spent on the implementation of the program. The rebate processing fee may differ by appliance type rebated and must be included in the proposal. Provide information as to the process for determining the rebate processing fee.
- b. Provide a spreadsheet detailing the budget broken down into the following categories:
 - Accounting
 - Processing (total of (a) above)
 - Marketing
 - Education
 - Tracking
 - Personnel
 - Travel
 - Equipment
- c. Forecast when funds will be exhausted.

III. EVALUATION OF PROPOSALS

MDA-ED will review each proposal to determine if the Proposer has the capacity in place to successfully administer SEEARP. MDA-ED may make reasonable investigations deemed necessary and proper to determine the ability of the Proposer to perform the activity, and the Proposer shall furnish to MDA-ED all information for this purpose. MDA-ED reserves the right to reject any proposal if the evidence submitted by, or investigation of the Proposer fails to satisfy MDA-ED that the Proposer is properly qualified to carry out the obligations of the contract and to complete the activity described therein. Submission of an RFP response does not constitute or imply an award. Evaluation of the Proposer's qualifications shall include:

1. The ability, capacity, skill, financial and other necessary resources to perform the work or provide the service required;
2. The ability of the Proposer to perform the work or provide the service promptly or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the Proposer; and
4. The quality of performance of previous contracts or services.

Evaluation of proposals shall be based on the following specific factors:

Evaluation Factor	Importance
The overall quality of the proposed plan for performing the required service.	Critical
Understanding of the project and its objectives.	Very Important
The degree of completeness of response to the specific requirements of the RFP.	Very Important
The Proposer's ability to provide the required services as reflected/evidenced by qualifications (education, experience, etc.)	Very Important
The personnel, equipment, facilities and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting.	Important
A record of past performance of similar work.	Critical
Pricing	Important

ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS REQUEST SHALL BE IN WRITING. PROPOSERS MAY DESIGNATE THOSE PORTIONS OF THE PROPOSALS WHICH MAY CONTAIN TRADE SECRETS OR OTHER PROPRIETARY DATA WHICH MAY REMAIN CONFIDENTIAL IN ACCORDANCE WITH SECTION 25-61-9 AND 79-23-1 OF THE MISSISSIPPI CODE.

Discussion with Offerors

The MDA-ED may conduct discussions with offerors who submit proposals determined to be reasonably susceptible of being selected for award; however, proposals may also be accepted without such discussions.

Minimum Effective Period of Proposal

All proposals are required to remain in effect for at least 6 months from the date submitted to MDA-ED.

Rejection of Proposals

Proposals that do not conform to the requirements set forth in this RFP may be rejected by MDA. Any and all proposals may be rejected by MDA. Reasons for rejection include, but are not limited to, the following:

- The proposal contains unauthorized amendments to the requirements of the RFP;
- The proposal is conditional;
- The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous;
- The proposal is not received by the deadline;
- The proposal is not signed by an authorized representative of the Proposer; or
- The proposal contains false or misleading statements or references.

Disposition of Proposals

All submitted proposals become the property of MDA-ED.

RFP Does Not Constitute Acceptance of Offer

The release of this RFP does not constitute an acceptance of any offer, nor does such release in any way obligate MDA-ED to award funds. Additionally, the submission of a proposal does not constitute an award. MDA-ED reserves the rights to accept, reject, or negotiate any or all proposals on the basis of the evaluation criteria contained within this document. The final decision to award funds to any party rests solely with MDA-ED.

Exceptions and Deviations

Proposers taking exceptions to any part or section of the solicitation shall indicate such exceptions on the proposal and shall fully describe the exception. Failure to indicate any exception will be interpreted as the Proposer's intent to comply fully with the requirements as written. Conditional proposals, unless specifically allowed, shall be subject to rejection in whole or in part.

Non-Conforming Terms and Conditions

A proposal that includes terms and conditions that do not conform to the terms and conditions in the RFP is subject to rejection as non-responsive. MDA-ED reserves the right to permit the Proposer to withdraw nonconforming terms and conditions from its proposal prior to a determination by MDA-ED of non-responsiveness based on the submission of non-conforming terms and conditions.

Expenses Incurred in Preparing Offers

MDA-ED accepts no responsibility for any expense incurred by the Proposer in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the Proposer.

Additional Information

Questions concerning this RFP must be submitted in writing to: Mississippi Development Authority, American Recovery and Reinvestment Act RFP#EN02172010, 501 North West Street, Woolfolk Building, Suite 1500, Jackson, MS 39201 Attn: MDA Procurement. Questions may also be submitted via email to procurement@mississippi.org. Questions will be received through February 3, 2010 at 12:00 P.M. Central Standard Time. No questions will be answered following this date.

Proposers are cautioned that any statements made by the contact person that materially change any portion of this RFP shall not be relied upon unless subsequently ratified by a formal written amendment to this RFP.

Acknowledgement of Amendments

MDA will provide written notice of all changes to this RFP in the form of an amendment to this RFP prior to response deadlines.

Proposers shall acknowledge receipt of any amendment to this RFP by signing and returning the amendment with the proposal, by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter. The acknowledgement must be received by MDA-ED by the time and at the place specified for receipt of proposals.

Debarment

By submitting a proposal, the Proposer certifies that it is not a person or entity currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi or the Federal government.

Proposal Submission Instructions

The original and five (5) copies of the proposal and all attachments shall be signed and submitted in a sealed envelope or package to: Mississippi Development Authority, Attn: Mike

McCollough/Lynn Johnson Burris, American Recovery and Reinvestment Act RFP#EN02172010, 501 North West Street, Woolfolk Building, Suite 1500, Jackson, MS 39201. The envelope or package shall be marked “Sealed Proposal SEEARP RFP” in the lower left hand corner. Each page of the proposal and all attachments shall be identified with the name of the Proposer.

The following response format shall be used for all submitted proposals:

- I. **Management Summary:** Provide a cover letter indicating the underlying philosophy of the firm in providing the service.
- II. **Proposal:** Describe in detail how the service will be provided as described in Section II of the RFP.
- III. **Corporate experience and capacity:** Describe the experience of the firm in providing the service, give number of years that the service has been delivered, and provide a statement on the extent of any corporate expansion required to handle the service. Identify the specific Project Manager or equivalent to be assigned to this program.
- IV. **Personnel:** Attach resumes of all individuals to be involved in the delivery of service—from principals to field technicians—that include their experience in this area of service delivery. Indicate the level of involvement by principals of the firm in the day-to-day operation of the contract.
- V. **References:** Give at least three (3) references for contracts of similar size and scope, including at least two (2) references for current contracts or those awarded during the past three years. Include the name of the organization, address, the length of the contract, a brief summary of the work, and the name and telephone number of a responsible contact person. Employees and outsourcing contracts may not be listed as references.
- VI. **Acceptance of Conditions:** Indicate any exceptions to the General Terms and Conditions of the RFP document and to insurance, bonding or any other requirements listed.
- VII. **Additional Data:** Provide any additional information that will aid in evaluation of the response.
- VIII. **Cost Data:** Estimate the annual and total cost (price) of the service. Cost data submitted at this stage is not binding and is subject to negotiation, if your firm is chosen as a finalist. Include the number of personnel proposed to be assigned to the contract and include the budget data requested in section II.C.6 of the RFP.
- IX. Include a signed MDA ARRA Proposal Submission Form (Attachment A).
- X. Include a signed MDA ARRA Certification Form (Attachment B).

Proposal Acceptance Period

Proposals must be received no later than 3:00 P.M. Central Standard Time on February 17, 2010. No proposals will be accepted after this time.

Timely submission of the proposal is the responsibility of the Proposer. Offers received after the specified time shall be rejected and returned to the Proposer unopened.

Milestone	Date
Release of RFP	January 25, 2010
Deadline for Proposers to submit written questions to MDA-ED	12:00 p.m. CST, February 3, 2010
Deadline for MDA-ED to respond to questions submitted by Proposers	February 8, 2010
Proposals Due	3:00 p.m. CST, February 17, 2010
Selection of Finalist	April 2010

CONTACT INFORMATION

Questions regarding this Request for Proposal must be submitted to:

Mississippi Development Authority
Attn: MDA Procurement
American Recovery and Reinvestment Act RFP #EN02172010
P.O. Box 849
Jackson, MS 39205-0849

Or

501 North West Street
Woolfolk Building, Suite 1500
Jackson, MS 39201

Proposals and attachments must be submitted to:

Mississippi Development Authority
Attn: Mike McCollough/Lynn Johnson Burris
American Recovery and Reinvestment Act RFP #EN02172010
P.O. Box 849
Jackson, MS 39205-0849

Or

501 North West Street
Woolfolk Building, Suite 1500
Jackson, MS 39201

Contract Terms and Conditions

By submitting a written, signed proposal in response to this RFP, the Proposer agrees to be bound by all of the following Terms and Conditions, which will be incorporated into the final contract document between the parties. The term "Authority" used throughout these 30 Contract Terms and Conditions shall be defined as the Mississippi Development Authority.

1. Notices--All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any changes of address.

For the Contractor:

Name, Title, Address, City, State, Zip

For the Authority: Motice Bruce, Energy Division Director, Mississippi Development Authority, 501 N. West Street, 6th Floor, Jackson, MS 39201.

2. Termination for Default Clause--If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the Authority will thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination. In that event, any furnished or unfurnished documents, data, studies, surveys, drawings, maps, models, photographs, reports, or other materials prepared by the Contractor under this Contract will, at the option of the Authority, become the Authority's property. The Contractor will be entitled to receive just and equitable compensation for any satisfactory work completed and delivered under the terms of this Contract.

Notwithstanding the above paragraph, the Contractor will not be relieved of liability to the Authority for damages sustained by the Authority by virtue of any breach of this Contract by the Contractor, and the Authority may withhold any payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the Authority from the Contractor is determined.

3. Termination for Convenience Clause--
 1. *Termination.* The Procurement Officer of the Authority may, when the interests of the Authority so require, terminate this Contract in whole or in part, for the convenience of the Authority. The Procurement Officer shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.
 2. *Contractor's Obligations.* The Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out

of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Authority. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so. The Contractor shall be entitled to compensation for services performed up to the date of termination, and authorized and accepted by the Authority.

4. Modification or Renegotiation--This Contract may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or State revisions of any applicable laws or regulations make changes in this Contract necessary.
5. Change in Scope of Work--The Authority may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor, or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the Authority and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the Authority in writing of this belief. If the Authority believes that the particular work is within the scope of the Contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the Scope of Services.

6. Anti-Assignment/Subcontracting--The Contractor acknowledges that it was selected by the Authority to perform the services required hereunder based, in part, upon the Contractor's special skills and expertise. The Contractor shall not assign, subcontract or otherwise transfer this Contract in whole or in part without the prior written consent of the Authority, which the Authority may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the Authority of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the Authority in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that the Authority may deem necessary. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.
7. Interest of the Contractor and the Contractor's Employees--The Contractor covenants that neither it nor its employees presently have any interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Contractor further covenants that in the performance of this Contract, no person having such interest will be employed.

8. Confidential Information--"Confidential Information" shall mean (a) those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential, and (b) all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the Authority and any other information designated in writing as confidential by the Authority. Each party to this Contract agrees to protect all confidential information provided by one party to the other; to treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its Subcontractors shall rest with the Contractor. Disclosure of any confidential information by the Contractor or its Subcontractors without the express written approval of the Authority shall result in the immediate termination of this Contract.
9. Officials Not to Benefit--No member of or delegate to the Congress of the United States of America, and no Resident Commissioner will be admitted to any share or part thereof or to any benefit to arise here from.
10. Ownership of Documents and Work Papers--The Authority shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this Contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to Authority upon termination or completion of this Contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Authority and subject to any copyright protections.
11. Record Retention and Access to Records--Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the Authority or any duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. The Contractor shall retain all records related to this Contract for three (3) years after final payment is made under this Contract and all pending matters are closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.
12. Personnel--The Contractor represents that it has, or will secure, at its own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of, or have any contractual relationship with the Authority. All of the services required hereunder will be performed by the Contractor under its supervision,

and all personnel engaged in the work will be fully qualified and will be authorized or permitted under State and local law to perform such services.

13. Right to Inspect Facility--The Authority may at reasonable times, inspect the place of business of a Contractor or any Subcontractor, which is related to the performance of any contract awarded by the Authority.
14. Disputes--Any dispute concerning a question of fact under this Contract, which is not disposed of by agreement of the parties, shall be decided by the Executive Director of the Authority or his designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute breach under the terms of this Contract. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.
15. Waiver--No delay or omission by either party to this Contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this Contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this Contract will void, waive, or change any other term or condition. No waiver by one party to this Contract of a default by the other party will imply, be construed as or require waiver of future or other defaults.
16. Severability--If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Contract that can be given effect without the invalid or unenforceable provision, and to this end, the provisions hereof are severable. In such event, the parties shall amend the Contract as necessary to reflect the original intent of the parties, and to bring any invalid or unenforceable provisions in compliance with applicable law.
17. Applicable Law--The Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions and, any litigation with respect thereto shall be brought in the courts of the State. The Contractor shall comply with applicable federal, State and local laws and regulations.
18. Compliance with Laws--The Contractor understands that the Authority is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, State or local laws. All such discrimination is unlawful and the Contractor agrees during the term of this Contract that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now exists and as may be amended or modified.

19. Representation Regarding Contingent Fees--The Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fees, except as disclosed in the Contractor's bid or proposal.
20. Representation Regarding Gratuities--The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 7-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.
21. Procurement Regulations--The Contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 301 North Lamar Street, Jackson, Mississippi, for inspection.
22. Availability of Funds--It is expressly understood and agreed that the obligation of the Authority to proceed under this Contract agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Contract are, at anytime, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Authority, the Authority shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Contract without damage, penalty, cost or expenses to the Authority of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
23. Indemnification--To the fullest extent allowed by law, the Contractor will indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi and the Authority from and against all claims, demands, liabilities, suits, actions damages, losses, and any costs related thereto, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees resulting from any negligent acts or misconduct of the Contractor, its agents, or employees.
24. Integrated Agreement/Merger--This Contract, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, irrespective of whether written or oral. This Contract may be altered, amended, or modified only by a written document executed by the Authority and the Contractor. The Contractor acknowledges that it has thoroughly read all Contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this Contract shall not be construed or interpreted in favor of or against the Authority or the Contractor on the basis of draftsmanship or preparation hereof.

25. Oral Statements--No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. The Authority must make all modifications to the Contract in writing.
26. Third Party Action Notification--Contractor shall give the Authority prompt notice in writing of any action or suit filed, and prompt notice of any claim against the Contractor by any entity that may result in litigation related in any way to this Contract.
27. Independent Contractor Status--The Contractor shall, at all times, be regarded as and shall be legally considered an independent Contractor and shall at no time act as an agent for the Authority. Nothing contained herein shall be deemed or construed by the Authority, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint venturers, employer and employee, or any similar such relationship between the Authority and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the Authority or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the Authority and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the Authority. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Authority; and Authority shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The Authority shall not withhold from the contract payments to the Contractor any federal or Mississippi unemployment taxes, federal or Mississippi income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the Authority shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State of Mississippi for its employees.
28. *Stop Work Order*--
 1. Order to Stop Work. The Procurement Officer of the Department, may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either: (a) cancel the stop work order; or (b) terminate the work covered by such order as provided in the "Termination for Default Clause" or the "Termination for Convenience Clause" of this Contract.

2. Cancellation or Expiration of the Order. If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the Contract shall be modified in writing accordingly, if: (a) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and (b) the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
 3. Termination of Stopped Work. If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
 4. Adjustments of Price. Any adjustment in Contract price made pursuant to this clause shall be determined by mutual consent of the parties.
29. *Certification of Independent Price Determination*--The proposer certifies that the prices submitted in response to this solicitation have been arrived at independently and without - for the purpose of restricting competition - any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or methods or factors used to calculate the prices bid.
30. The State requires the Contractor to submit invoices electronically throughout the term of this Contract. Vendor invoices shall be submitted to the state agency using the processes and procedures identified by the State. Payments by state agencies using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. Contractor understands and agrees the State is exempt from the payment of taxes. All payments shall be in United States currency.

Exhibit __

Reporting and Registration Requirements Under Section 1512 of the American Recovery and Reinvestment Act of 2009.

The recipient¹ agrees to the following reporting and registration requirements of Section 1512 of the American Recovery and Reinvestment Act and in accordance with 2 CFR § 176.50, if applicable:

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

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

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

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

(e) The contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to title XV, Section 1512 of the ARRA, the State shall require that the contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retains by this contract from the contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

¹ As used here and hereafter, recipient means "any entity other than an individual that receives Recovery Act funds in the form of a grant, cooperative agreement or loan directly from the Federal Government." 2 CFR § 176.30.

Required Use of American Iron, Steel, and Manufactured Goods Not Covered Under International Agreements Under Section 1605 of the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods of Section 1605 of the of the American Recovery and Reinvestment Act and in accordance with 2 CFR §176.140 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, if applicable:

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

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

- (i) Processed into a specific form and shape; or
- (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

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

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

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

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

[Award official to list applicable excepted materials or indicate 'none']

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

- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

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

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

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

recipient does not submit a satisfactory explanation, the award official need not make a determination.

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

steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

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

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

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<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.]			

Required Use of American Iron, Steel, and Manufactured Goods Covered Under International Agreements Under Section 1605 of the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods (covered under International Agreements) of Section 1605 of the of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.160 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that involves iron, steel, and/or manufactured goods materials covered under international agreements, if applicable:

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

Designated country—

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods—

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

Domestic iron, steel, and/or manufactured good—

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured

goods or products, as long as the manufacture of the goods occurs in the United States.

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

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

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

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

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

(b) *Iron, steel, and manufactured goods.*

(1) The award term and condition described in this section implements—

- (i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and
- (ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or

manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

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

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

[Award official to list applicable excepted materials or indicate "none"]

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

- (i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;
- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
- (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;

- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

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

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

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

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

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

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

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<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 all delivery costs to the construction site.]			

Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act.

The recipient agrees to the following wage rate requirements of Section 1606 of the of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.190 when issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair, if applicable:

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

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

Recipient Responsibilities regarding tracking and documenting Expenditures under the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following tracking and documenting responsibilities required by Section 1606 of the Recovery and Reinvestment Act and in accordance with 2 CFR §176-210, if applicable:

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

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

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

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

Requirement to Comply with Provision of Section 902 of the American Recovery and Reinvestment Act of 2009

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- (1) Examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) Interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Required Whistleblower Protection Under Section 1553 of the American Recovery and Reinvestment Act of 2009.

[Section 1153 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5](#), provides protections for certain individuals who make specified disclosures relating to recovery Act funds. Any non-federal employer receiving recovery funds is required to post a notice of the rights and remedies provided under this section of the Act.

Required Provision Noting Authority of Inspector General in of Section 1515(a) of the American Recovery and Reinvestment Act of 2009

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Required Provision to Comply with NEPA and NHPA *Construction, Renovation, and Remodeling Projects Only*

ARRA funded projects may be required to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and related statutes, including requirements for plans and projects to be reviewed and documented in accordance with those processes. If the ARRA program from which funds are to be expended requires such language, then NEPA and NHPA requirements may need to be included in contracts or sub-grants. Such language would be dependent on federal oversight agency guidance as well as from the following: http://nepa.gov/nepa/regs/CEQ_1609_NEPA_Guidance_03-12.pdf (NEPA only)

Requirement to Acknowledge Availability and Use of Funds

Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

Requirement Regarding Federal, State and Local Tax Obligations

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

Requirement to Comply with Anti-Discrimination and Equal Opportunity Statutes

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, ARRA Recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

Requirement to Comply With All Other ARRA Requirements

The contractor will comply with any other requirements of ARRA, upon notification by this entity.

**Requirement to Comply with E-Verification Provision of Section 71-11-3 of the
Mississippi Code of 1972, as amended**

The respondent represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (§71-11-3 of the Mississippi Code of 1972, as amended) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject contractor to the following:

- (a) termination of this Agreement and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (b) the loss of any license, permit, certification, or other document granted to contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or both.
- (c) In the event of such termination/cancellation, contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

Attachment A

MISSISSIPPI DEVELOPMENT AUTHORITY

**AMERICAN RECOVERY AND REINVESTMENT ACT
STATE ENERGY EFFICIENT APPLIANCE REBATE PROGRAM**

PROPOSAL SUBMISSION FORM

RFP #EN02172010

Organization Name _____

Address _____

Contact Person _____

Telephone Number _____

Email _____

NOTE: It is the Proposer's responsibility to provide adequate information in their application package to enable MDA-ED to ensure that the proposal meets the required criteria. Items listed in the proposal shall be in order specified in the RFP. Failure to do so could result in the rejection of the proposal.

EMPLOYEES NOT TO BENEFIT

I (we) hereby certify that if the contract is awarded to our organization, that no employee of MDA, or members of his/her family, including spouse, parents, or children has received or been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution or any similar form of remuneration on account of the act of awarding and/or executing this contract.

CONFLICTS OF INTEREST

The Proposer [] is [] is not aware (*mark one box*) of any information bearing on the existence of any potential organization conflict of interest.

COLLUSION

I certify that this proposal is submitted made without prior understanding, agreement, or connection with any corporation, firm or person submitting an offer for the same services, materials, supplies, or equipment and without collusion or fraud. I understand collusive bidding is a violation of State and Federal laws and can result in fines, prison sentences, and civil damage awards.

Attachment A continued

PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective contractor represents as a part of such contractor's proposal that such contractor has/has not (*circle the applicable word or words*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

I hereby certify that the responses to the included representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of the proposal and certify that I am authorized to sign for my organization.

Signature Date

Name (Printed) Title

Attachment B

ARRA Certification

To the best of my knowledge and belief, all data contained in this proposal is true and correct. By signing this document I certify that all requirements of this Request for Proposal, Proposal Procedures, and Requirements for the State Energy Efficient Appliance Rebate Program in accordance with the American Recovery and Reinvestment Act of 2009 are and will be followed. This certifies that I possess legal authority to submit this proposal. This further certifies that if this proposal is chosen that I understand that the program requirements may/will change as federal and state guidelines come forth, and that I will follow all guidelines including reporting, financial management and tracking requirements to the degree necessary to carry out the intended use of these funds. I certify that should I be awarded a contract, I will carry out all of the following requirements and restrictions: all state and federal laws and regulations governing the expenditure of federal funds; Certified Lobbying, Debarment, Suspensions and other Responsibility Matters; Drug Free Workplace; Nondiscriminatory Practices and applicable Labor Laws; MS Employment Protection Act; all Office of Management and Budget Requirements (OMB Circular A-133, OMB Circular A-122, 2CFR 215.21, OMB Circular A-102, 2CFR176-210, and 48 CFR 31.2); protect whistleblowers and prompt referral to an appropriate inspector general.

I certify that I understand that this is only a proposal and in no way does this constitute a contract with the Mississippi Development Authority. If funded, I, the recipient, will remain fully obligated under the provisions of the contract until such time that the project has been completed and fully closed out to the satisfaction of MDA-ED.

Signature, Executive Director/Chairman

Print Name and Title

Company Name

Date