



Department of Commerce

Innovation is in our nature.

Request for Application

Washington State Energy Efficient Appliance Rebate Program (SEEARP)

Issue Date: **January 5, 2010**

Application Due Date: **January 19, 2010**
Received by 10:00 a.m. PST
Washington State Department of
Commerce Energy Policy Division

PLEASE READ THIS ENTIRE DOCUMENT.

*This project is funded by the
American Recovery and Reinvestment Act.* **RECOVERY.GOV**



**Washington
State Energy Efficient Appliance Rebate Program
Request for Application**

TABLE OF CONTENTS

PART I	PURPOSE AND OBJECTIVES	page 3
PART II	PROGRAM DESCRIPTION	page 5
PART III	APPLICATION AND SUBMISSION REQUIREMENTS	page 9
PART IV	REVIEW AND AWARD PROCESS	page 12
PART V	QUESTIONS AND CONTACTS	page 14
Appendix A	PROVISIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009	page 15
Appendix B	COMMERCE-WIDE GENERAL TERMS AND CONDITIONS	page 23

PART I – PURPOSE AND OBJECTIVES

Purpose

The purpose of this Request for Application is to seek qualified applicants who in collaboration with other Washington State appliance efficiency programs will provide comprehensive fulfillment and marketing services for the American Recovery and Reinvestment Act (ARRA) funded State Energy Efficient Appliance Rebate Program (SEEARP) in the State of Washington. Projects under this grant program will be administered by the Department of Commerce (Commerce) and funded, in whole or in part, with funds appropriated through the ARRA. The successful applicant will be a sub-recipient of this grant.

Consumer rebates provide a direct method for moving stimulus money into the market place. Jobs will be created or maintained locally through distribution and sale of appliances and recycling efforts, and nationally through increased appliance manufacturing.

The SEEARP Objectives are:

- Introduce Washington residents to a new appliance efficiency level, and support market transform towards the most efficient clothes washers available.
- Offer consumer rebates providing incentive to replace inefficient clothes washers and refrigerators and help increase the energy efficiency of homes in Washington State.
- Leverage partnerships with Washington utilities (electric, gas, water and wastewater) and retailers to enhance existing appliance rebate opportunities and reduce administrative costs.
- Keep administrative costs low to maximize funds available for rebates, while adhering to monitoring and reporting requirements.
- Funds are based on the statutory formula of the States population compared to the U.S. population. States will use their allocation to pay for the full cost of all product rebates and up to 50% of the administrative costs to carry out the rebate program. As such, States will be responsible for at least 50% of their individual program administrative costs. Therefore, sub-recipient shall implement a program consistent with the ARRA funding requirements that limit the federal administration funds to 50% of the administrative costs. Commerce has no funding available for the administration of the program and expects partner matching to provide for the non-federally funded administrative costs. The Washington SEEARP budget includes:
 - Federal funds available for the Sub-recipient not to exceed \$570,000.
 - Matching funds to be equal to or greater than the Sub-recipient grant plus \$105,000 (The \$105,000 is in consideration of Commerce administrative costs).

The overall program is expected to start in March of 2010 and run through December 2011. The rebate program will consist of two components, a longer-term term clothes washer market transformation program and a short-term refrigerator program. Ongoing federal and state reporting will continue through late January 2012. Our period of performance ends February 17, 2012.

Eligible Applicants

Private for-profit and nonprofit entities licensed to do business in the state of Washington are eligible to apply. The applicant may sub-contract elements of the deliverables; however it is required that all sub-contractors and their scope of work be identified within the application and follow all applicable state and federal requirements. The primary applicant and planned sub-

contractors certify they have not been debarred by the Federal government, convicted of fraud, or had a Federal debt discharged.

Funding Description

The Recovery Act provides \$296M to implement Section 124 of the Energy Policy Act of 2005 (EP Act 2005) establishing U.S. DOE support for States rebate programs for residential ENERGY STAR appliance products (those that represent improvements in efficiency compared to the majority of products in the market). Washington State received \$6,284,000 in formula funds. Commerce's application for State Energy Efficient Appliance Rebate Program (SEEARP) funds was approved by U.S. DOE in August 2009. As required, Commerce submitted their proposed rebate plan to U.S. DOE on October 15, 2009. The plan was approved in November 2009.

Be advised that special terms and conditions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Access to records by Inspectors General and the Government Accountability Office;
- Prohibition on use of funds for gambling establishments, aquariums, zoos, golf courses or swimming pools;
- Protecting whistleblowers and requiring prompt referral of evidence of a false claim to an appropriate inspector general; and
- Certification and Registration.

Available Funds

Commerce prefers to award only one (1) Sub-recipient; however, reserves the right to offer multiple Sub-recipients at the discretion of Commerce. The quality of service will subject to review by Commerce at any time. Any contract awarded as a result of this RFA is contingent upon the availability of funding.

Funding Period

Federal guidance requires that funds must be expended by February 2012 (three years following enactment of the Recovery Act). To ensure Commerce is able to close out all contracts by this deadline, contract funds awarded pursuant to this application must be expended by the sub-recipient by December 31, 2011. The fixed-price contract negotiated with the successful applicant will be entered in to for a specified time frame ending no later than December 31, 2011. The agreement shall not be modified, amended, extended, assigned, transferred, subcontracted or augmented except by written agreement between Commerce and the Sub-recipient.

Funding Restrictions

Cost Principles: Costs must be allowable in accordance with the applicable Federal cost principles referenced in 10 CFR Part 600. For details see http://management.energy.gov/policy_guidance/financial_assistance.htm

PART II – PROGRAM DESCRIPTION

Commerce is seeking a qualified Sub-recipient (Grantee) to develop and implement a comprehensive appliance rebate fulfillment program to support the goals of this program described in the following program objectives, milestones, rebates, key criteria and scope of service.

The Sub-recipient will be expected to:

- Demonstrate past success in delivery of similar rebate and marketing efforts
- Design a process that ensures all Washington state residences have access to the rebate program
- Develop messaging that encourages recycling and makes it easy for people to take part
- Ensure timely rebate processing and demand management
- Leverage and enhance existing marketing efforts being implemented by Washington utilities and retailers (partners) to reduce administrative costs and maximize funds available for consumer rebates
- Implement a fraud prevention and detection strategy
- Provide the required reporting metrics at required intervals

Table 1. Program Objectives

Program Objective	Target Value
Total Number of Rebates Paid	59,766
Total Number of Appliances Replaced	59,766
Total Number of Appliances Recycled	34,766
Total Annual Energy Savings (kWh)	13,480,755
Total Annual Energy Savings (Therms)	99,000
Total Annual Water Savings (gallons)	355,410,000
Total Annual CO ₂ Reductions (lbs)	16,083,192
Jobs Created*	76*

** DOE is waiting for specific OMB guidance on how to quantify jobs created for reporting purposes. In the meantime, the general guidance is that every \$92,000 expended leads to one "job created."*

Table 2. Program Timeline and Milestones

Program Milestones	Target Date
Issue Sub-recipient RFA	1/5/2010
RFA Award Selection and Contract Negotiations	1/19/2010 – 1/29/2010
Complete Rebate and Marketing Subcontracts	2/15/2010
Finalize Washington Utility and Partner Recruitment	2/15/2010
Develop and Distribute Program Marketing	2/1/2010 to 3/15/2010

Launch State Rebate Program	3/15/2010
Refrigerator Blitz	3/15/2010 to 4/15/2010
Clothes Washer Blitz	3/15/2010 to 4/15/2010
Clothes Washer Long Term Program	4/15/2010 to 12/30/2011
Federal and State Reporting – Ongoing	Quarterly
Federal and State Reporting Completed	2/17/2012

Table 3. Rebate Detail

Products to be Rebated	Rebate Level (\$)	Targeted Quantity	Total Cost	Targeted # of Products Recycled
Clothes Washer MEF >=2.46	100	45,000	4,500,000	20,000
ENERGY STAR Refrigerators	75	14,766	1,107,450	14,766
	\$		\$	
Total Rebates and Costs		59,766	5,541,750	

Key Criteria for Consumer Rebates

Key criteria for consumer rebates have been included to provide background to the applicant. The applicant will be asked to address these limitations as part of program implementation

- The state rebate program shall supplement, not supplant existing rebates, program expenditures.
- Rebates must be made available to all Washington State consumers on a first come, first served basis.
- Rebates shall be limited to one refrigerator and one clothes washer per household.
- Rebates are for the replacement of existing equipment in residential occupancies in Washington. Consumers must sign an affidavit confirming this criteria.
- Rebates cannot be used by businesses, new construction or multi-family buildings, or landlords.
- Rebates shall be given only to consumers that provided proof that the appliance was purchased from a Washington State store.
- To receive the state rebate for a refrigerator, the consumer must provide documentation that the appliance was recycled, or at least decommissioned in accordance with state disposal laws (recycling shall be emphasized).

The scope of services to be provided under this program includes:

Task 1: Rebate Eligibility and Processing

The program will be accomplished by using mail-in rebates and will be available to all residential consumers in the state of Washington for the purchase of qualified appliances. Each existing residential address will be eligible for a single refrigerator rebate and a single clothes washer rebate. Measures will be implemented so that rebates will be limited to purchases made in the State of Washington. Funding for the rebate program is limited and

will be available on a first come, first served basis until funds are depleted. The Sub-recipient will implement processing and verification methods consistent with existing Washington utility rebate programs and meet minimum State and Federal data requirements. Rebates will be processed in a timely fashion consistent with existing Washington utility programs. It is the desire of the State to have a maximum turn-around time for payment of rebates not to exceed six weeks.

The program will be developed to track and manage the demand for rebates. The clothes washer program is structured to last for up to eighteen months. The refrigerator program will be short in duration. This combination will result in a great deal activity early in the program but with a long tail on the rebate program for clothes washers. Rebate totals will be closely tracked to assure we do not oversubscribe the program. We will periodically consider program modifications to further manage rebate delivery timing.

Task 2: Communication, Support and Marketing Outreach

Commerce and Sub-recipient

The program will be available for communications with State through a specified point of contact. This contact person will maintain regular communications with State throughout the program and will be available to fulfill special requests. A strategy for clear, concise and responsive communication is a critical component of a successful program.

Working in close collaboration, Commerce, the partner utilities and Sub-recipient will develop the appropriate marketing and outreach tools that are easy to understand and consistent with partner messages and local communities. Elements might include a program Web site, print media, electronic media retailer marketing and advertisements, utility customer outreach, radio PSAs, in-store promotions, and news releases.

The Sub-recipient will maintain a web site for the State that includes online rebate information and rebate application forms.

Utilities and Partners

Sub-recipient will provide Washington utility and other partner recruitment and notification process including the details of the program and the roles and expectations for a utility or partner to participate, delivering joint utility/State or just supporting State rebate program. Sub-recipient will work with the utility and partners in an agreed upon format established in a formal agreement. The program will be developed to support a rebate process that minimizes increase in administrative costs and streamlines processes.

Sub-recipient will work with Washington utilities and retailers to include the State rebate within their promotional materials and provide said marketing materials. If the Washington utility offers a utility rebate on the State's rebated appliances, joint utility and State rebate forms and POP materials will be developed and where applicable, develop and implement a joint thank you letter to accompany customer check.

Sub-recipient will coordinate with and support complementary Washington utility initiatives, as well as leverage retailer and manufacturer co-marketing, events and promotions.

Sub-recipient will provide a toll free contact line for program inquiry and for participants to order more materials or ask questions.

For no or low-key participating Washington utilities, the Sub-recipient will support stores in those areas through developing and providing rebate forms, POP materials, training

materials and access to the program web-site and toll-free contact line. Sub-recipient will work with stores through either sending them the necessary materials to use and do phone/email check-ins or implement field store outreach and service.

State funding shall be used to supplement, not supplant existing efficiency program administrative and marketing efforts. Avoid duplication.

Consumers

Consumer outreach on the program details (dates, recycling information, disclaimers, etc.) will be coordinated through the Sub-recipient and conducted by the utility and retail partners through the program Web site, direct mail, advertisements, in-store promotional efforts, and other approaches identified in the planning process. We will rely on a first-come, first-served policy.

The Sub-recipient will create and implement a plan to address customer service issues, which will start with the initial complaint and escalate up to the State program manager, should that be necessary.

Task 3: Product Replacement and Recycling

The rebate program will be marketed as an appliance replacement program. All press releases, promotional materials, rebate coupons and all other advertising produced for the program will state definitively that the state appliance rebate program is limited to the replacement of existing appliances. Clothes washer recycling is not required; however, refrigerator recycling will be required. Information will be made available to the consumer to assist in the recycling process such as where and how to recycle the old appliance, or at least decommissioned in accordance with state disposal laws (recycling shall be emphasized). Sub-recipient will develop method for consumers to document recycling, including in retailer affidavits, recycling receipts, disposal receipts or other methods.

Task 4: Data Tracking, Reporting, and Invoicing

Sub-recipient will process incentive submittals and all program information in a detailed database. The database will contain comprehensive information, enabling the program to track all customer submittal information and provide up-to-date reports on units processed through the program.

The Sub-recipient will submit comprehensive reports to Commerce (via email) based on monthly and quarterly milestones including, but not limited to, the following categories and as specified in Appendix A.

Reporting Based on Milestones

- *Units Reporting* – Reports based on agreed upon milestones shall be submitted via email. Milestones shall be developed that track the number of rebates process to manage a predictable program end date.

Monthly Reporting

- *Units Reporting* – Reports that reflect the quantity of units processed will be submitted monthly. Units reports will include details of sales processed specified time period and include forecasted units for a specified time period and forecasted for program duration.
- *Program Status Reporting* – Monthly program status reports will be submitted no later than the 5th of each month including: rebate redemption by store, field report on sales

people interaction (training, promotions, partnerships, events, etc), and marketing and promotional information (website analytics, web surveys, customer experience in purchasing)

- *Incentive Invoicing* – Incentive invoicing shall be provided often enough to assure the customer receives their rebate in a six week time period. At a minimum, monthly invoices will be submitted on verified rebates to be paid that align with sales processed in the Units Reporting. *Depending on matching or not matching State and Washington utility rebate processor, need to spell out different methods.*
- *Program Invoicing* – Invoices will be submitted monthly and will accompany a Statement outlining incentives invoices, administration, and any documented match.
- *Administrative Costs* – Costs identified by category of Accounting, Processing, Marketing, Education, and Tracking.
- *Match Documentation* – The Sub-recipient, Utilities and partners will document labor and expenses spent on supporting State program in rebate processing, store outreach and service, and any marketing activities and submit necessary report if the State program has initiated the creation of new jobs. The Sub-recipient will assist with communication and encouragement of retailers/manufacturers to provide match documentation, appliance recycling service as a competitive benefit to their customers, and recycling data.
- *Documentation Archive* – Copies of customer incentive documentation and proof of purchase are attached to all payment checks and held on file for a minimum of seven years to support all financial documents. In addition to a monthly and yearly internal review of financials, Program conducts an annual external audit by an independent CPA assuring financial accuracy and verifying that all company records are held in accordance with the US Generally Accepted Accounting Practices.

Quarterly Reporting

- *Federal Recovery Act Reporting* – All sub-recipients and their partners, contractors and/or vendors are responsible for reporting pursuant to Section 1512 of the American Recovery and Reinvestment Act of 2009. Commerce will work with the successful Sub-recipient, partner utilities and contractor to track program metrics such as overall program progress, rebate payments, expenditure rates and financial status, job-related information, appliance recycling, and data related to energy savings and CO2 emissions reductions. In some instances, data must be broken down by month. Commerce will collect data on a quarterly basis from the Sub-recipient and submit the required state and federal quarterly reports. Please review Appendix A for full details.

PART III - APPLICATION AND SUBMISSION REQUIREMENTS

The application narrative must include the elements listed below in the same numerical order. Please use the forms or tables where provided and a narrative format where they are not. The narrative shall not exceed 15 pages, 11 point font. Supplemental materials do not count towards page limit. Applications received that exceed these specifications may be rejected.

1. Executive Summary

- Brief description of the proposal and how it will allow Commerce to meet the objectives of the SEEARP identified in this RFA.

- Highlight the major features, cost and timing of the proposal
- Identify any requirements that cannot be met or will be provided by a subcontractor
- Protected information should be identified in this section

2. Describe the organization, services and applicable experience

- Describe the organization, purpose, history and provide an organization chart.
- Describe current services provided, customers and location of facilities including data processing facility and customer service center.
- Provide an overview of accounting system and practices.
- Provide a description of the organization and personnel's experience in providing similar services and expertise needed to manage SEEARP.
- Describe existing relationships with utilities and retailers operating in Washington State.
- Describe experience with fraud prevention and mitigation.
- Describe understanding of and prior experience with implementing ARRA funded programs.
- Provide a reference list of not less than three (3) recent clients including the name of the organization, contact person, address and telephone number of contact person within the organization.

3. Program Description

- Describe how the program will support the requirements described in Part II, Program Description. Ensure the narrative includes additional information on the following areas:

Rebate Eligibility, Processing and Fulfillment – Task 1

- Describe how program will be implemented to ensure the least amount of interruption with existing Washington utility programs.
- Describe ability to process rebate checks when co-mingled with utility rebate, separate from utility rebate, and when there is no utility participation. What is ability to process a single rebate check for multiple offerings?
- Describe your ability to handle both large and volume processing requirements.

Communication, Support and Marketing Outreach – Task 2

- Identify the program Single Point of Contact.
- Describe all existing Washington utility and retailer relationships that will be leveraged in this program and how you will keep them involved and aware of program.
- Describe ability to partner with retailers, alliances and manufacturers to leverage existing programs and reduce federal administrative expenditures or provide match.
- Describe how this program will be marketed statewide to provide all Washington residents an opportunity to participate.
- Describe how program will manage consumer expectations as it relates to rebate product requirements and availability of funds and how messages will be communicated when funds are nearly depleted.
- Describe how you will handle customer service and respond to telephone and written inquiries for residents regarding questions with the status of their rebate and /or their rebate check.
- Describe how you will handle non English speaking residents.

Product Replacement and Recycling – Task 3

- Describe the approach you will use to implement required refrigerator recycling or decommissioning. Describe appliance replacement and recycling plan offered through this program and how the program will encourage recycling of the old product. Include any additional services and programs to enhance the replacement and recycling.
- Describe process for proof of recycling at both consumer and retailer level to support program objectives and reporting requirements.
- **Note:** Only administrative and marketing portions of recycling costs may be covered by this award.

Data Tracking, Reporting and Invoicing – Task 4

- Describe your understanding of federal reporting requirements under Section 1512 of the Recovery Act and how you intend to comply with the detailed reporting criteria. (Please refer to Appendix A)
- What systems do you have in place to gather the required data? Provide an example.

4. Implementation Strategy and Timeline

- Describe in detail the milestones and tasks of your organization and partners during the project start-up. Include the order of tasks and time required to design, promote, launch and administrate the SEEARP and ability to meet the target implementation of March 15, 2010.
- Describe methods and procedures to mitigate risk.
- Identify any perceived risk with the target implementation of March 15, 2010, and propose alternative schedule if required.

5. Budget Proposal

- Funds are based on the statutory formula of the States population compared to the U.S. population. States will use their allocation to pay for the full cost of all product rebates and up to 50% of the administrative costs to carry out the rebate program. As such, States will be responsible for at least 50% of their individual program administrative costs. The budget must demonstrate how the sub-recipient shall implement a program consistent with the ARRA funding requirements that limit the federal administration funds to 50% of the administrative costs. Commerce has no funding available for the administration of the program and expects partner matching to provide for the non-federally funded administrative costs. The Washington SEEARP budget includes:
 - Federal funds available for the Sub-recipient not to exceed \$570,000.
 - Matching funds to be equal to or greater than the Sub-recipient grant plus \$105,000 (The \$105,000 is in consideration of Commerce administrative costs).
- Based on this information, please identify and describe the total budget by the following categories:

COST CATEGORY	Amount	Administrative Match	Total
Accounting			
Processing			
Marketing			

Education			
Tracking			
Personnel			
Indirect Charges			
Travel			
Equipment			
Contractual			
Total Budget			

- Describe how you will leverage existing Washington rebate programs to gain efficiency in timing and costs.
- Describe plan to provide documentation of 50% of the administrative costs from non-federal sources.
- Identify sources and amounts of administrative matching funds.
- In the event that the number of rebates changes during the program period, separate identify fixed and per unit costs for rebate processing
- If match, describe the work or service that will be provided and show estimated value.
- Delineate existing costs from new costs in order to supplement, not supplant existing programs.
- If third-party will provide match, include signed letters of commitment or other documentation if available supporting how match will be provided and in what amount.

Matching Partner	Match Commitment Amount	M Services	Total Match	Documentation of Match Commitment
(use as many lines as required)				
Total Matching				

PART IV – REVIEW AND AWARD PROCESS

A committee will evaluate the applications (narrative and tables) against the following point system and the award shall be made in the best interests of the state of Washington as determined by the professional judgment of the committee. The application may be evaluated by anyone designated by Commerce and in the body of the proposal any specific information for which an applicant claims business confidentiality protection as “PROTECTED”. Each area of the evaluation criteria must be addressed as specified in Part III of this RFA or the submission may be disqualified. Priorities for the program include length of time to develop and implement, low administrative costs, economic stimulus, ability to leverage Washington Utility programs, maximum consumer benefit and fraud prevention. Commerce staff may independently verify all information provided, and that the discoveries of incomplete, inaccurate, or misleading information are grounds for the disqualification of this application or the revoking of an award at any time. All applications received in response to this RFA may be rejected and Commerce may solicit additional proposals.

Upon approval of the RFA response by Commerce, the successful applicant must be able to begin development and implementation of the program in order to meet the target timelines and expeditiously begin issuing rebates to consumers.

EVALUATION CRITERIA	MAXIMUM POINTS
1. Executive Summary	10
2. Describe the organization, services and applicable experience	20
3. Program Description	20
4. Implementation Strategy and Timeline	20
5. Budget Proposal Federal Funds Matching Funds	20
Total Possible Points	90

Request for Application response submission:

Please include in your cover document:

Legal Company Name and Address
Primary Contact Name, Title and Telephone Number
DUNS number and State Tax ID Number

No later than 10:00 a.m. on January 19, 2010, please submit an electronic copy (no zip files) of your application to the following email:

rebecca.stillings@commerce.wa.gov

Additionally, send an original hard-copy with signature to the address below. Please note, the email date and time will count as your submission deadline. All supplemental materials that cannot be submitted electronically should be identified in the cover email and received by 5:00 PM, Thursday, January 21, 2010.

Washington State Department of Commerce
Energy Policy Division
Attn: Rebecca Stillings
Mailing: PO Box 43173
Physical: 906 Columbia Street SW, 5th Floor
Olympia WA 98504-3173

All materials submitted in response to this RFA become the property of Commerce. Late submissions will not be accepted.

PART V – QUESTIONS AND CONTACTS

State Program Manager Contact Information:

Name and Title: Rebecca Stillings, Energy Policy Specialist
Agency: Washington State Department of Commerce Energy Policy Division
Email: rebecca.stillings@commerce.wa.gov
Phone: (360) 725-3123

The Request for Application will be available to the public and interested applicants via the following Web sites:

- www.commerce.wa.gov/recovery
- www.commerce.wa.gov/site/1107/default.aspx
- <http://recovery.wa.gov/contracting.asp>

APPENDIX A

PROVISIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 Public Law 111-5

1. Section 1512(c) of the Recovery Act: Reporting Requirements

The Sub-recipient acknowledges and agrees that ARRA places a great emphasis on accountability and transparency in the use of taxpayer dollars. Among other things, it creates a new Recovery Accountability and Transparency Board and a new website – Recovery.gov – to provide information to the public, including access to detailed information on grants and contracts made with Recovery Act funds.

Commerce, as a prime recipient of Recovery Act funds, must comply with the Recovery Act's extensive reporting requirements, including quarterly financial and programmatic reporting. Commerce will require quarterly reports from its Sub-recipient in order to fulfill its obligations. The Sub-recipient receiving Recovery Act funds may expect that a standard form(s) and/or reporting mechanism will be made available to help streamline the process.

The Sub-recipient agrees to provide to Commerce all reports, documentation, or other information, as may be required to meet reporting obligations under the Recovery Act. The Sub-recipients' receipt of funds is contingent on meeting the Section 1512 reporting requirements.

Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Sub-recipients receiving Recovery Act funds should be aware of the current Recovery Act section 1512(c) requirements.

Sub-recipient Reports: Not later than five days after the end of each calendar quarter (January 5, April 5, July 5, and October 5), each sub-recipient that received recovery funds from a Federal agency shall submit a report to Commerce via email that contains:

- (1) The total amount of recovery funds received from Commerce
- (2) The amount of recovery funds received that were expended or obligated to projects or activities
- (3) A detailed list of all projects or activities for which recovery funds were expended or obligated, including:
 - Name of the project or activity
 - Description of the project or activity
 - Evaluation of the completion status of the project or activity
 - Number of hours worked on program activities **directly funded** by recovery funds
 - For each rebate, report the appliance efficiency level, rebate amount, and any associated recycling requirements
- (4) Sub-recipient must provide the following data on a quarterly basis for each unique product rebate offered through its program. All data should be **broken down by month**.
 - Number of Rebate Payments Issued: State must report the number of rebates paid to customers.

- Total Value of Rebate Payments: State must report the total rebate funding paid to customers.
 - Number of Appliances Hauled-Away: State must report on the number of old units hauled away for disposal. If haul-away is a requirement of a rebate, or of an additional incentive, this value should be based on actual data collected from the program partners or rebate processing firm. If haul-away is not a requirement of the rebate, this value should be estimated.
 - Haul-Away Verification: State must report whether the number of units hauled-away is verified by a third-party, self-reported by customers, or estimated by State.
 - Number of Appliances Recycled: State must report on the number of units recycled. If recycling is a requirement of a rebate, or of an additional incentive, this value should be actual data collected from the program partners or rebate processing firm. If recycling is not a requirement of the rebate, this value should be estimated.
 - Recycling Verification: State must report whether the number of units recycled is verified by a third-party, self-reported by customers, or estimated by State.
- (5) Estimated Energy Saved and CO2 emissions avoided (States are expected to provide the interim estimated benefits due to the rebates provided. This primarily takes the form of annual energy savings and CO2 abatement due to activity in the period. For example, if 1,000 rebates were delivered in the quarter, report the expected annual savings due to the appliances sold. The reporting framework will include an estimate calculation of kWh, BTU saved and CO2 for each specific appliance. The State may report this value or values based on its own methodology, with justification and approval.)
- (6) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

2. Section 1512 of the Recovery Act: Registration with Central Contractor Registration (CCR)

Recipients of funds under the Recovery Act shall register with the Central Contractor Registration (CCR) database at www.ccr.gov. This ensures consistent reporting of data about each entity and thereby makes data more useful to the public. In order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required and should be inserted in Box # 13 of the Face Sheet of this Agreement.

3. Section 1602 of the Recovery Act: Preference for Quick-Start Activities

NOT APPLICABLE TO THE STATE ENERGY EFFICIENT APPLIANCE REBATE PROGRAM

4. Section 1604 of the Recovery Act: Limit on Funds

Section 1604 of the Recovery Act provides:

None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

5. Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009

NOT APPLICABLE TO THE STATE ENERGY EFFICIENT APPLIANCE REBATE PROGRAM

6. Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009 – Davis-Bacon Act

DAVIS-BACON ACT IS NOT APPLICABLE TO THE STATE ENERGY EFFICIENT APPLIANCE REBATE PROGRAM

However, the work performed by this Grant may be subject to the State's prevailing wage laws, Chapter 39.12 RCW. The Grantee is advised to consult with the Washington State Department of Labor and Industries to determine the prevailing wages that must be paid.

7. Non-supplanting of State and Local Funds

Grantees must use federal funds to supplement existing State and local funds for program activities and must not replace (supplant) State or local funds that they have appropriated or allocated for the same purpose. Potential supplanting will be the subject of monitoring and audit. Violations may result in a range of penalties, including suspension of current and future funds under this program, suspension or debarment from federal grants, recoupment of monies provided under a grant, and civil and/or criminal penalties. For additional guidance regarding supplanting, refer to the information provided at www.ojp.usdoj.gov/recovery/supplantingguidance.htm.

8. Protection of Whistleblowers (See Attachment 1)

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the Recovery Act 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;
- Gross waste of covered funds;
- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- Abuse of authority related to the implementation or use of covered funds; or

- 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.

Any employer receiving covered funds shall post notice of the rights and remedies provided under this section. The recommended written notice is attached as “Know Your Rights Under the Recovery Act”.

9. False Claims Act

Each grantee or Sub-recipient should promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor or other person has submitted a false claim under the False Claims Act or who has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

10. Listing Recovery Act Jobs with the Washington State Employment Security Department (See Attachment 2)

This Grant is funded with federal stimulus funds under the Recovery Act, which has strict reporting requirements for funds spent and jobs created or retained. Unless hiring is directly from a union hall, all job openings created by the Grantee for this project must be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource. In addition, all Subgrantees hired by the Grantee also must be required to list jobs and report hiring results to WorkSource. Existing Grantee or Subgrantee employees who are retained using funds from this project also must be reported to WorkSource.

WorkSource will pre-screen and refer qualified job candidates for the Grantee's or Subgrantee's consideration. The Grantee and Subgrantee also have the discretion to use other, additional recruitment systems and retain the right to make all hiring decisions.

To begin the listing and reporting process, contact the Employment Security Department ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849, or ARRA@esd.wa.gov.

ATTACHMENT 1

Know Your Rights under the Recovery Act!

Did you know? The American Recovery and Reinvestment Act of 2009 ¹ 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:

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

- 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.

ATTACHMENT 2

How to list ARRA jobs with the Employment Security (ESD) WorkSource system

To help with the increased transparency and accountability that are required under the American Recovery & Reinvestment Act (ARRA), ESD's ARRA Business Unit will be the central point of contact for state agencies and their contractors for listing and tracking ARRA-funded jobs.

Step 1: State agencies notify ESD about ARRA-funded contracts

Within 2 days after awarding an ARRA-funded contract, state agencies should provide the following information to Employment Security's ARRA Business Unit:

- Name, phone number and address of contractor
- Title or short description of the contract

Report this information to ESD's ARRA Business Unit at ARRA@esd.wa.gov, 877-453-5906 (toll-free) or 360-438-4849. (Employment Security will use the information to verify that contractors comply with the requirement stated in Step 2.)

Step 2: List ARRA-funded jobs with ESD's WorkSource system

State agencies, contractors and sub-contractors should contact the ARRA Business Unit to begin the process of listing their ARRA-funded jobs with the WorkSource system. The ARRA Business Unit may be reached at 877-453-5906 (toll-free), 360-438-4849 or ARRA@esd.wa.gov.

Here's what we'll do with the information: The ARRA Business Unit will relay the information to a business outreach lead at a WorkSource office in the employer's community. The business outreach lead will contact the employer to obtain the information necessary to list the job/s (create a "job order"), and to discuss the employer's recruitment needs and the services available through WorkSource.

The WorkSource business outreach lead will search the agency's database for qualified applicants (based on job-skill requirements), screen potential applicants, and refer selected candidates to the employer for consideration. (Employers retain the right to use other or additional recruitment systems, and they make all hiring decisions.)

Step 3: Report hiring information

After completing the hiring process, the employer should contact the WorkSource business outreach lead to "close" the job order and provide the following information:

- Job title
- Number of people hired
- Starting wage and hours

This information will be used in reports and status updates to the governor, the federal government and the public.



Frequently asked questions for ARRA employers

Q1. What services can I get when I list jobs with WorkSource?

- A.** WorkSource staff screens and refers job seekers based on how well their skills meet your job requirements. The screening is done broadly or narrowly, depending on how many people you want to interview.

WorkSource also can help you with free job advertising, pay-rate information, tax credits and information on employment laws and regulations. We're committed to helping your business succeed.

Q2. What screening and assessment of skills does WorkSource conduct?

- A.** We conduct a variety of screening and assessment. Contact your local WorkSource center to ask what assessment services are provided.

Q3. If the position requires a certain skill level, can WorkSource test applicants for math and reading levels or typing speed?

- A.** WorkSource staff will pre-screen applicants based on the qualifications that you need. Ask your WorkSource staff person about their ability to assess certain skills required for the position.

Q4. Can we conduct interviews at WorkSource?

- A.** You can use space at WorkSource for mass application sessions, one-on-one interviews, or even group orientations. Contact your local WorkSource to check availability.

Q5. What is the anticipated hiring time?

- A.** We recommend you plan ahead (7-10 days), although you may hire when you choose. The job will be listed for you right away.

Q6. What if WorkSource doesn't have job seekers with the skills and abilities that match our needs?

- A.** WorkSource staff will look first for qualified local applicants. If no one is available, then the search is expanded to include other areas to see if applicants are willing to commute or relocate. During this recession, there is an unprecedented pool of qualified applicants. Our matching system has the unique capabilities to match skilled job seekers with available jobs.

Q7. Is WorkSource able to coordinate job fairs or hiring events?

- A.** Yes, WorkSource often coordinates large job fairs and targeted hiring events. Your local WorkSource staff can arrange the details such as date, availability of space, and the amount of time they need to help coordinate your hiring event.
- Q8. Do I have to list jobs and report hiring information to WorkSource?**
- A.** Yes. Even if you hire someone who already works for you in a different position, report the hire for contract requirements.
- Q9. Can I list my job opening with other sources like temp agencies or run a classified ad in the newspaper at the same time?**
- A.** You may recruit as broadly as you like. Just remember that a requirement of your contract is to post contract-funded job openings with your WorkSource business representative and report all hiring information.
- Q10. What information is being tracked by WorkSource?**
- A.** WorkSource tracks information about jobs listed, job candidates referred and the job openings filled.
- Q11. Who is the information being provided to?**
- A.** Participation and performance information is provided by the Employment Security Department to the U.S. Department of Labor. It also is being reported to the Governor, who is required by the federal Office of Management and Budget to report about jobs preserved and created during the recession.
- Q12. How long after placing the job order with WorkSource will it take before I can interview applicants?**
- A.** It could happen the same day if there are interested, qualified job seekers who apply right away. Typically, it may take a few days.
- Q13. What if I already have a job candidate (or a list of candidates), why do I have to list my jobs with WorkSource?**
- You can hire anyone you want, but you need to report it to us. Listing your stimulus-funded jobs with WorkSource enables us to track how many jobs are created and filled. We will relay the information to the governor and the federal government, who are documenting the effects of the stimulus funding.

APPENDIX B

COMMERCE-WIDE GENERAL TERMS AND CONDITIONS GENERAL GRANT FEDERAL ARRA FUNDS

1. ACKNOWLEDGEMENT OF FEDERAL FUNDING

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

“This project was supported by Grant No. DE-EE0001605 awarded by U.S. Department of Energy. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Energy. Grant funds are administered by the Washington State Department of Commerce Energy Policy Division.”

COMMERCE, as a prime recipient of American Recovery and Reinvestment Act (hereinafter "Act") funds, is legally obligated to meet accountability and reporting requirements under the Act. The state of Washington or the federal funding source may also identify additional requirements or other changes in requirements. Such requirements may be in statute, regulation, policy, or procedure. COMMERCE is responsible for incorporating these requirements into the performance of this Grant. Although all requirements have not yet been identified, please expect additional reporting requirements, to include, but not limited to, performance outcomes such as created or retained jobs.

2. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

3. COMPENSATION

COMMERCE shall pay an amount not to exceed () for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Grantee's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

The federal Office of Management and Budget has issued a October 7, 2009 Memorandum restricting any “obligation or award” to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, or allied organizations. A copy of this Memorandum is marked as Attachment 3 and is both incorporated by reference and attached to this agreement. This Memorandum requires that no federal funding be awarded through this contract or through any subgrants, subcontracts, or other Sub-recipient arrangements.

NOTES:

1. *List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. or reference documents that specify Grantee's compensation and payment, e.g., Grantee's compensation for services rendered shall be based on the schedule set forth in Exhibit (), Fees and Expenses.*
2. *Identify federal and state dollar amounts when relevant reporting requirements apply.*

EXPENSES

NOTE: *Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses that are appropriate for the Grant.*

Grantee shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Grantee for authorized expenses shall not exceed \$, which amount is included in the Grant total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Grantee shall receive compensation for travel expenses at current state travel reimbursement rates.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE [*not more often than monthly.*]

NOTE: *Payment can also be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Grant, payment at conclusion of the Grant, etc.*

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed the progress of the project, and fees. The invoice shall include the Grant Number DE-EE0001605. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

NOTE: *Optional Provision - COMMERCE shall withhold 10 percent from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).*

5. INSURANCE

The Grantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subgrantee, or agents of either, while performing under the terms of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of the Grant start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subgrantees provide adequate insurance coverage for the activities arising out of subgrants.

Automobile Liability. In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Grantee or its Subgrantee, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under Grant to the Grantee. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program

accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$100,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Grantor as beneficiary.
- B. Subgrantees that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name the Grantee as beneficiary.
- C. The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

6. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment C – Additional Provisions Under the American Recovery and Reinvestment Act of 2009, Public Law 111-5
- Attachment A – Scope of Work
- Attachment B – Budget
- [add any other attachments incorporated by reference on the Face Sheet]

7. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "Cognizant State Agency" shall mean the state agency from which the sub-recipient receives federal financial assistance. If funds are received from more than one state agency, the cognizant state agency shall be the agency that contributes the largest portion of federal financial assistance to the sub-recipient.
- C. "COMMERCE" shall mean the Department of Commerce.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.

- G. "Subgrantee" shall mean one not an employee of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee" and "subgrantees" means subgrantee(s) in any tier.
- H. "Sub-recipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- I. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the Grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

8. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

9. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

10. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

11. APPROVAL

This Grant shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The Grant may be altered, amended, or waived only by a written amendment executed by both parties.

12. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

13. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorneys fees and costs.

14. AUDIT

A. General Requirements

Grantees are to procure audit services based on the following guidelines.

The Grantee shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subgrantees also maintain auditable records.

The Grantee is responsible for any audit exceptions incurred by its own organization or that of its Subgrantees.

COMMERCE reserves the right to recover from the Grantee all disallowed costs resulting from the audit.

As applicable, Grantees required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Grantee must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations

Grantees expending \$500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Grantees to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. The Schedule of State Financial Assistance must be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number
- Grantor contract number
- Total award amount including amendments (total grant award)
- Beginning balance
- Current year revenues
- Current year expenditures
- Ending balance
- Program total

If the Grantee is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Grantee in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Grantee shall include the above audit requirements in any subgrants.

In any case, the Grantee's financial records must be available for review by COMMERCE.

C. Documentation Requirements

The Grantee must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Grantee's fiscal year(s) to:

Department of Commerce
ATTN: Audit Review and Resolution Office
906 Columbia Street SW, Fifth Floor
PO Box 48300
Olympia WA 98504-8300

In addition to sending a copy of the audit, when applicable, the Grantee must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and
4. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, state, or local) terminated for cause of default.

B. Where the Grantee is unable to certify to any of the statements in this grant, the Grantee shall attach an explanation to this Grant.

C. The Grantee agrees by signing this grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

D. The Grantee further agrees by signing this grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- a) The lower tier grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - b) Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such Grantee shall attach an explanation to this Grant.
- E.** The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.
- F.** Grantees should review the Excluded Parties List System (<http://www.epls.gov>) before determining if a prospective contractor is considered responsible.

10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A.** “Confidential Information” as used in this section includes:
- 1. All material provided to the Grantee by COMMERCE that is designated as “confidential” by COMMERCE;
 - 2. All material produced by the Grantee that is designated as “confidential” by COMMERCE; and
 - 3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B.** The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

11. CONFORMANCE

If any provision of this Grant violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

12. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

13. DISALLOWED COSTS

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subgrantees.

14. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with COMMERCE's Director, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee's name, address, and Grant number; and

- be mailed to the Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

15. DUPLICATE PAYMENT

The Grantee certifies that work to be performed under this Grant does not duplicate any work to be charged against any other Grant, subgrant, or other source.

16. ETHICS/CONFLICTS OF INTEREST

In performing under this Grant, the Grantee shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

17. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Grant. The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by the Grantee's agents, employees, representatives, or any Subgrantee or its agents, employees, or representatives.

The Grantee's obligation to indemnify, defend, and hold harmless shall not be eliminated or reduced by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subgrant's shall include a comprehensive indemnification clause holding harmless the Grantee, COMMERCE, the state of Washington, its officers, employees and authorized agents.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

18. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Grantee's performance or failure to perform the Grant. The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by the Grantee's agents, employees, representatives, or any Subgrantee or its agents, employees, or representatives.

The Grantee's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subgrants shall include a comprehensive indemnification clause holding harmless the Grantee, COMMERCE, the state of Washington, its officers, employees and authorized agents.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

19. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

20. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Grant, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

21. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

United States Laws, Regulations and Circulars (Federal)

- A. American Recovery and Reinvestment Act (ARRA) of 2009
- B. Audits

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

B. Labor and Safety Standards

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

C. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90 Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

D. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122 (if the Grantee is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102 (if the Grantee is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

E. Other

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Internal Revenue Service Rules, August 31, 1990.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Grantees who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

F. Privacy

Privacy Act of 1974, 5 U.S.C. 552a.

Washington State Laws and Regulations

A. Affirmative action, RCW 41.06.020 (11).

B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.

C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.

D. Discrimination-human rights commission, Chapter 49.60 RCW.

E. Ethics in public service, Chapter 42.52 RCW.

F. Office of minority and women’s business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.

G. Open public meetings act, Chapter 42.30 RCW.

H. Public records act, Chapter 42.56 RCW.

I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

22. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant.

23. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant.

24. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Grantee shall participate in local public transportation forums and implement strategies designed to ensure access to services.

25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Grants with the state. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

26. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used under this Grant for working for or against ballot measures or for or against the candidacy of any person for public office.

27. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Grant.

The Grantee's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of Grants using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
 - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - c. Positive efforts shall be made to use small and minority-owned businesses.

- d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Grantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - e. Subgrants shall be made only with reasonable Subgrantees who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - f. Some form of price or cost analysis should be performed in connection with every procurement action.
 - g. Procurement records and files for purchases shall include all of the following:
 - 1) Grantees selection or rejection.
 - 2) The basis for the cost or price.
 - 3) Justification for lack of competitive bids if offers are not obtained.
 - h. A system for Grant administration to ensure Grantee conformance with terms, conditions and specifications of this Grant, and to ensure adequate and timely follow-up of all purchases.
4. Grantee and Subgrantees must receive prior approval from COMMERCE for using funds from this Grant to enter into a sole source Grant or a Grant where only one bid or proposal is received when value of this Grant is expected to exceed \$5,000.
- Prior approval requests shall include a copy of proposed Grants and any related procurement documents and justification for non-competitive procurement, if applicable.

28. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

29. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

30. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

31. RECORDS MAINTENANCE

The Grantee shall maintain all books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant. Grantee shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

32. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

33. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Grant. The Grantee shall provide access to its facilities for this purpose.

34. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

35. SEVERABILITY

If any provision of this Grant or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Grant that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Grant and to this end the provisions of this Grant are declared to be severable.

36. SUBGRANTING

The Grantee may only subgrant work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subgranting, the Grantee shall maintain written procedures related to subgranting, as well as copies of all subgrants and records related to subgrants. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subgranting procedures as they relate to this Grant; (b) prohibit the Grantee from subgranting with a particular person or entity; or (c) require the Grantee to rescind or amend a subgrant.

Every subgrant shall bind the Subgrantee to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subgrantee fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the

Subgrantee to assure fiscal conditions of this Grant. In no event shall the existence of a subgrant operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subgrant shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subgrantee's performance of the subgrant.

37. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

38. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

39. TERMINATION FOR CAUSE / SUSPENSION

In event COMMERCE determines that the Grantee failed to comply with any term or condition of this Grant, COMMERCE may terminate the Grant in whole or in part upon written notice to the Grantee. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, COMMERCE upon written notice may allow the Grantee a specific period of time in which to correct the non-compliance. During the corrective-action time period, COMMERCE may suspend further payment to the Grantee in whole or in part, or may restrict the Grantee's right to perform duties under this Grant. Failure by the Grantee to take timely corrective action shall allow COMMERCE to terminate the Grant upon written notice to the Grantee.

"Termination for Cause" shall be deemed a "Termination for Convenience" when COMMERCE determines that the Grantee did not fail to comply with the terms of the Grant or when COMMERCE determines the failure was not caused by the Grantee's actions or negligence.

If the Grant is terminated for cause, the Grantee shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Grant and the replacement Grant, as well as all costs associated with entering into the replacement Grant (i.e., competitive bidding, mailing, advertising, and staff time).

40. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, the Grantor shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

41. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by COMMERCE, the Grantee shall:

- A. Stop work under the Grant on the date, and to the extent specified, in the notice;
- B. Place no further orders or subgrants for materials, services, or facilities related to the Grant;
- C. Assign to COMMERCE all of the rights, title, and interest of the Grantee under the orders and subgrants so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants. Any attempt by the Grantee to settle such claims must have the prior written approval of COMMERCE; and
- D. Preserve and transfer any materials, Grant deliverables and/or COMMERCE property in the Grantee's possession as directed by COMMERCE.

Upon termination of the Grant, COMMERCE shall pay the Grantee for any service provided by the Grantee under the Grant prior to the date of termination. COMMERCE may withhold any amount due as COMMERCE reasonably determines is necessary to protect COMMERCE against potential loss or liability resulting from the termination. COMMERCE shall pay any withheld amount to the Grantee if COMMERCE later determines that loss or liability will not occur.

The rights and remedies of COMMERCE under this section are in addition to any other rights and remedies provided under this Grant or otherwise provided under law.

42. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

ATTACHMENT 3

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 7, 2009
M-10-02

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag, Director
SUBJECT: Guidance on section 163 of the Continuing Resolution regarding the Association of Community Organizations for Reform Now (ACORN)

This memorandum provides guidance to Executive Branch agencies regarding the implementation of section 163 of the Continuing Appropriations Resolution, 2010, Division B of Pub. L. No. 111-68 (CR), which states:

SEC. 163. None of the funds made available by this joint resolution or any prior Act may be provided to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, or allied organizations.

Your agency must immediately commence all necessary and appropriate steps to comply with section 163. This includes the following:

- ***No future obligations of funds.*** No agency or department should obligate or award any Federal funds to ACORN or any of its affiliates, subsidiaries or allied organizations (collectively "affiliates") during the period of the CR. To the extent your agency already has determined that funds should be obligated or awarded to ACORN or its affiliates but has not yet entered into any agreement to provide such funds to ACORN or any of its affiliates, your agency should not provide such funds, or enter into any such agreements to do so. As section 163 makes clear, its prohibition applies not only to the funding that is made available by the CR, but also to the funding that was made available by previously enacted statutes. In addition, the text of section 163 is sufficiently broad to cover funding that was made available for fiscal year (FY) 2009 and prior fiscal years, as well as funding that is or will be made available for FY10.
- ***Suspension of grant and contractual payments.*** If your agency has an existing contract or grant agreement with ACORN or its affiliates, the agency should: (i) where permissible, immediately suspend performance of any obligations under the contract or agreement, including payment of Federal funds; and (ii) consult promptly with the agency's general counsel and, if necessary, the Office of Management and Budget (OMB) and the Department of Justice concerning the legal considerations that bear on the performance of such obligations under the existing contract or agreement.
- ***No funding of ACORN and its affiliates through Federal grantees or contractors.*** Your agency should take steps so that no Federal funds are awarded or obligated by your grantees or contractors to ACORN or its affiliates as subgrantees, subcontractors, or other Sub-recipients. Because section 163 states that "[n]one of the funds . . . may be provided," this prohibition applies not only to a direct

recipient of Federal funds but also to a Sub-recipient (e.g., a subcontractor, subgrantee, or contractor of a grantee). We recommend that your agency:

- notify all Federal grant and contract recipients of the prohibition contained in section 163, and provide them with a copy of this guidance document; and
- advise all Federal grant and contract recipients (a) not to provide Federal funds to ACORN or its affiliates as subgrantees, subcontractors or other Sub-recipients, consistent with this guidance, and (b) to notify your agency of any existing subgrants, subcontracts or other Sub-recipient agreements with ACORN or its affiliates and of how the grantee or contractor is planning to comply with the prohibition with respect to those subgrants, subcontracts or Sub-recipient agreements.

If you have any questions concerning this memorandum, please contact Preeta D. Bansal, OMB General Counsel and Senior Policy Advisor, at OGC@omb.eop.gov.