



Solicitation Information
22 Feb 11

LOI # 7448314

TITLE: Waste Water Treatment Facilities – Energy Efficiency Upgrades and Measures

Submission Deadline: 21 March 11 @ 11:30 AM (Eastern Time)

Questions, in a Microsoft Word format, concerning this solicitation must be received by the Division of Purchases at questions@purchasing.ri.gov, no later than **4 March 11 @ 12:00 Noon** (Eastern Time). Please reference the LOI # on all correspondence. Questions received, if any, will be answered and posted on the Internet as an addendum to this solicitation. It is the responsibility of all interested parties to download this information.

SURETY REQUIRED: No

BOND REQUIRED: No

Jerome Moynihan, C.P.M., CPPO
Assistant Director for Special Projects

Vendors must register on-line at the State Purchasing Website at www.purchasing.ri.gov.

NOTE TO VENDORS:

Offers received without the entire completed three-page RIVIP Generated Bidder Certification Form attached may result in disqualification.

THIS PAGE IS NOT A BIDDER CERTIFICATION FORM

SECTION 1 – INSTRUCTIONS AND NOTIFICATIONS TO PROPOSERS:

The Rhode Island Department of Administration/Division of Purchases, on behalf of The Rhode Island Office of Energy Resources is soliciting proposals from local governmental units that wish to perform energy efficiency upgrades and/or measures, and in accordance with the terms of this Letter of Intent and the State's General Conditions of Purchase. **Funding for this activity is being provided from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (Recovery Act), through the State Energy Program. Special terms and conditions apply to the use of these funds and a general description of the special terms and conditions are described in Section 5.**

This solicitation, and subsequent award, is governed by the State's General Conditions of Purchase, which is available at www.purchasing.ri.gov

To access the State's General Conditions of Purchase, enter our website, click on RIVIP, then click on General Information and then click on Rules and Regulations. Once the Rules and Regulations are displayed, scroll to the bottom of the page and double click on Appendix A, which contains the State's General Conditions of Purchase.

INSTRUCTIONS AND NOTIFICATIONS TO OFFERORS:

Potential offerors are advised to review all sections of this Request carefully, and to follow instructions completely, as failure to make a complete submission as described elsewhere herein may result in rejection of the proposal.

Alternative approaches and/or methodologies to accomplish the desired or intended results of this procurement are solicited. However, proposals which depart from or materially alter the terms, requirements, or scope of work defined by this Request will be rejected as being non-responsive.

All costs associated with developing or submitting a proposal in response to this Request, or to provide oral or written clarification of its content, shall be borne by the offeror. The State assumes no responsibility for these costs.

Proposals are considered to be irrevocable for a period of not less than sixty (60) days following the opening date, and may not be withdrawn, except with the express written permission of the State Purchasing Agent.

All pricing submitted will be considered to be firm and fixed unless otherwise indicated herein.

Proposals misdirected to other State locations or which are otherwise not present in the Division of Purchases at the time of opening for any cause will be determined to be late and will not be considered. The "Official" time clock is in the reception area of the Division of Purchases.

In accordance with Title 7, Chapter 1.1 of the General Laws of Rhode Island, no foreign corporation shall have the right to transact business in the state until it shall have procured a

Certificate of Authority to do so from the Rhode Island Secretary of State (401-222-3040). *This will be a requirement only of the successful bidder (s).*

Offerors are advised that all materials submitted to the State of Rhode Island for consideration in response to this Request for Proposals will be considered to be public records, as defined in Title 38 Chapter 2 of the Rhode Island General Laws.

Also, Submitters should be aware of the State's MBE requirements, which addresses the State's goal of ten per cent (10%) participation by MBE's in all State procurements. For further information, contact the State MBE Administrator at (401) 574-8253 or cnewton@gw.doa.state.ri.us Visit the website <http://www.mbe.ri.gov>

Interested parties are instructed to peruse the Division of Purchases web site on a regular basis, as additional information relating to this solicitation may be released in the form of an addendum to this RFP / LOI

Equal Employment Opportunity (RIGL 28-5.1) § 28-5.1-1 Declaration of policy. – (a) Equal opportunity and affirmative action toward its achievement is the policy of all units of Rhode Island state government, including all public and quasi-public agencies, commissions, boards and authorities, and in the classified, unclassified, and non-classified services of state employment. This policy applies in all areas where the state dollar is spent, in employment, public service, grants and financial assistance, and in state licensing and regulation. For further information, contact the Rhode Island Equal Employment Opportunity Office, at 222-3090 or via email raymond1@gw.doa.state.ri.us

Subcontracts are permitted, provided that their use is clearly indicated in the offeror's proposal, and the subcontractor(s) proposed to be used are identified in the proposal.

If you wish to seek to do business with the State of Rhode Island, you must register and utilize the E-Verify Program. Please refer to www.dhs.gov/E-Verify or the Division of Purchases website at www.purchasing.ri.gov for more information.

RIGL 37-13-3.1 State public works contract apprenticeship requirements. * (a) Notwithstanding any laws to the contrary, all general contractors and subcontractors who perform work on any public works contract awarded by the state after passage of this act and valued at one million dollars (\$1,000,000) or more shall employ apprentices required for the performance of the awarded contract. The number of apprentices shall comply with the apprentice to journeyman ratio for each trade approved by the apprenticeship council of the department of labor and training.

ARRA SUPPLEMENTAL TERMS AND CONDITIONS

For contracts and sub-awards funded in whole or in part by the American Recovery and Reinvestment Act of 2009. Pub.L.No. 111-5 and any amendments thereto, such contracts and sub-awards shall be subject to the Supplemental Terms and Conditions For Contracts and Sub-awards Funded in Whole or in Part by the American Recovery and Reinvestment Act of 2009. Pub.L.No. 111-5 and any amendments thereto located on the Division of Purchases website at

www.purchasing.ri.gov."

For proposals that are primarily for architectural and/or engineering services, the following notice is given:

Persons or firms practicing Architectural and/or Engineering Services in the State of Rhode Island must possess a proper registration and Certificate of Authorization in accordance with Rhode Island General Laws.

A copy of the current Rhode Island Certificate of Authorization for the firm and current Rhode Island registration(s) for the individual(s) who would perform the work must be included behind the front page of each copy of the Proposal.

An offeror who does not have a current Rhode Island Certification of Authorization for the firm and current Rhode Island registration(s) must acknowledge non-compliance with this requirement and confirm in writing that, if selected for the project, will expedite acquisition of a Rhode Island registration(s) and Certificate of Authorization(s), the attainment of which will be required before an award will be made. The letter of acknowledgement must be included behind the front page of each copy of the Proposal.

The Board of Design Professionals can be contacted as follows:

Board for Design Professionals
1511 Pontiac Avenue (Bldg 68-2)
Cranston, RI 02920
Tel: 401-462-9530
Fax: 401-462-9532
Website: www.bdp.state.ri.us

It is intended that an award pursuant to this request will be made to a local governmental unit as a prime contractor, who will assume responsibility for all aspects of the work, and the procurement of goods and services, necessary to performance of activities set forth in its proposal, shall be in accordance with the applicable standards of the local government unit, except as provided otherwise in this solicitation or in an award made pursuant to this solicitation. Joint venture and cooperative proposals will be considered, and subcontractors are permitted, provided that their use is clearly indicated in the respondent's proposal, and that the joint venture partners and subcontractor(s) proposed to be used are identified in the proposal.

NOTICE TO VENDORS

Effective **January 1, 2011** all *public works project* related bids or proposals exceeding one million (\$1,000,000) dollars are required to include a "public copy". All agency contract solicitations, requests for proposals, invitations for bids, etc. shall state that any bid or proposal that exceeds one million (\$1,000,000) dollars must include a copy to be available for public inspection upon the opening of the bids. Any bid or proposal in excess of one million

(\$1,000,000) dollars which does not include a copy for public inspection shall be deemed to be non-responsive. For further information, please see R. I. Gen. Laws §37-2-18 (P.L. 221) <http://www.rilin.state.ri.us/PublicLaws/law10/law10221.htm> and Purchasing Rules & amendment at <http://www.purchasing.ri.gov/Notices2.aspx>.

In addition, the Division of Purchases has promulgated proposed regulations pursuant to R.I. Gen. Laws § 37-2-18 that implements the “public copy” requirement. Public hearing on the proposed regulations was held on Friday, December 17, 2010. The proposed regulations will become final on or about January 11, 2011. For further information please visit: www.sos.ri.gov.

SECTION 2 – PROJECT DESCRIPTION

Introduction and Background

The State of Rhode Island has promulgated “Rules and Regulations for Energy Efficiency Wastewater Treatment Facility Program,” a Rhode Island Regulation with the ERLID Number of 6375. These rules and regulations describe an Energy Efficiency Wastewater Treatment Facility Program and the manner in which the fund is to be administered. The purpose of this LOI is to solicit proposals to effectuate the fund as found in the rules and regulations, which may be found at: <http://sos.ri.gov/documents/archives/regdocs/released/pdf/OER/6375.pdf>.

Per the rules and regulations, the fund shall be administered in a manner that accomplishes these purposes:

- 1) establishing an Energy Efficiency Wastewater Treatment Facility Program in Rhode Island,
- 2) reducing energy costs of Wastewater Treatment Facilities through the, implementation of energy efficiency measures and deploying renewable energy and cogeneration systems,
- 3) assisting in the stabilization of commercial and residential sewer rates,
- 4) realizing environmental benefits to air and water quality
- 5) reducing the reliance on energy resources from outside of Rhode Island

Eligible Entities

Per the rules and regulations, Local Governmental Units are eligible to apply under this solicitation. Applicants may include any town, city, district, commission, agency, authority, board or other political subdivision or instrumentality of the state or of any political subdivision thereof responsible for the ownership or operation of a water pollution abatement project including the Narragansett Bay Commission.

Funding Availability

A total of \$3,332,194.00 is available through this solicitation. A maximum of \$1,000,000 may be awarded per Local Governmental Unit.

Compliance with the Recovery Act

The State of Rhode Island has been awarded funding for the State Energy Program through the Recovery Act to accomplish the goals set forth in the rules and regulations. As such, all Local Governmental Units that are deemed recipients of the Fund shall comply with all applicable Recovery Act requirements and guidance. No entity shall receive funding for a project that is ineligible under the Recovery Act State Energy Program.

The Recovery Act has the following purposes:

- 1) creation and retention of jobs,
- 2) realizing energy cost savings,
- 3) reducing dependence on imported fuels,
- 4) leveraging funds,
- 5) transforming markets, and
- 6) building program sustainability.

Duration of Awards

Per the rules and regulations, the program shall commence as of January 10, 2011 and conclude for the purposes of developing and supporting projects on March 31, 2012. However, project performance, monitoring, and reporting requirements shall continue as required by the Recovery Act. With the exception of performance monitoring and reporting requirements, all projects funded by this program must be completed on or before March 31, 2012.

Scope of Services.

The State therefore seeks proposals from qualified Local Governmental Units to administer and implement an Energy Efficiency Wastewater Treatment Facility Program as follows:

The Local Governmental Unit shall:

1. Administer and oversee the design and installation of energy efficiency, renewable energy, and/or cogeneration systems in wastewater treatment facilities.
2. Provide to the Office a detailed project plan that will include:
 - a. the energy efficiency, renewable energy, or co-generation measures proposed to be installed,
 - b. a narrative project description,
 - c. a project budget,
 - d. demonstrated need for the upgrade including the age of any equipment to be replaced and description of any damage caused to the WWTF by a declared emergency,
 - e. estimated annual cost savings to the wastewater treatment facility,
 - f. estimated annual electrical savings at the wastewater treatment facility,
 - g. a project timeline including dates on which it is expected the project can be installed, become operational, paid, and closed out,

- h. administrative organizational structure that identifies the names, titles, phone numbers, and e-mail addresses of the primary responsible party, the employee(s) responsible for overseeing the bidding process, the employee(s) responsible for overseeing the installation process, the employee(s) responsible for complying with the Recovery Act Davis-Bacon, Buy American and reporting requirements, and the employee(s) responsible for handling financial transactions related to the project.
- 3. Advise the Office promptly about any potential delays in the execution of the plan.

Proposed Contract Term: From the date of award to March 31, 2012.

SECTION 3 – DEFINITIONS

For the purposes of this request for proposals, the following terms shall have the meaning set forth below. Respondents shall use these terms as applicable in making proposals.

3.1 “Agency” means the Rhode Island Clean Water Finance Agency.

3.2 “ARRA” means the American Recovery and Reinvestment Act of 2009.

3.3 “Co-generation” means the simultaneous production by equipment of power, typically electricity and useful heat.

3.4 “DEM” means the Rhode Island Department of Environmental Management.

3.5 “Department” means the Rhode Island Department of Administration.

3.6 “DOE” means the U.S. Department of Energy.

3.7 “EDC” means the Rhode Island Economic Development Corporation.

3.8 “Energy Efficiency Measure” means an improvement to a Wastewater Treatment Facility, including equipment and physical operating control systems that produce reductions in energy costs that are greater over the life of the improvement than the net cost to the Wastewater Treatment Facility of the improvement over the life of the improvement. Energy Efficiency Measures may include cost effective co-generation and Renewable Energy Resource.

3.9 “Energy Efficiency Technical Assessment” means an evaluation of energy/cost savings opportunities at the WWTF.

3.10 “Energy Efficiency Up-Grade” means an improvement to a Wastewater Treatment Facility, including equipment, facilities, and physical operating control systems, that improve the energy efficiency of the Wastewater Treatment Facility above what the energy efficiency of the Wastewater Treatment Facility would be without the improvement. Energy Efficiency Up-Grades may include cost effective co-generation and Renewable Energy Resources.

3.11 “EPA” means the US Environmental Protection Agency.

3.12 "Local Governmental Unit" means any town, city, district, commission, agency, authority, board or other political subdivision or instrumentality of the state or of any political subdivision thereof responsible for the ownership or operation of a water pollution abatement project including the Narragansett Bay Commission.

3.13 “NPDES” means National Pollutant Discharge Elimination System.

3.14 “Office” means the Rhode Island Office of Energy Resources.

3.15 “Program” means the “Energy Efficiency Wastewater Treatment Facility Program” established by these rules and regulations.

3.16 “Project” means one or more “Energy Efficiency Measure” or “Energy Efficiency Upgrade” and the directly associated engineering and design costs of the measure.

3.17 “Renewable Energy Resource” means a renewable energy resource recognized in RIGL Chapter 39-26 or as formally recognized by the EPA or DOE.

3.18 “Wastewater” means human waste from any receptacles intended to receive or retain bodily waste products, and any organic or non-biological wastes from residences, businesses, institutions and industries or any combination of the above, as well as any water used as a means of conveyance of such wastes, which is intended to enter a Wastewater Treatment Facility for collection, conveyance, treatment and discharge in accordance with a National Pollutant Discharge Elimination System permit.

3.19 “Wastewater Treatment Facility” or “WWTF” means a group or assemblage of processes, devices and structures for the conveyance, treatment or removal of objectionable constituents of Wastewater. A WWTF shall include, but not be limited to, all physically connected wastewater collection system piping, pumping, storage, physical, chemical and/or biological treatment, filtering and disinfection systems. For the purposes of these Rules and Regulations, a Wastewater Treatment Facility shall not be considered to be: (1) an Onsite Wastewater Treatment System, which does not discharge into surface waters but discharge into subsurface waters; or, (2) any privately owned plumbing; or (3) any privately owned low-pressure grinder pumps.

SECTION 4 – PROPOSAL REQUIREMENTS

Pre-Proposal Questions and Proposal Submission:

Questions, in a Microsoft Word format, concerning this solicitation must be received by the Division of Purchases at question@purchasing.ri.gov, no later than **4 March 11 at 12:00 Noon** (Eastern Time). Please reference the LOI # on all correspondence. Questions received, if any, will be answered and posted on the Internet as an addendum to this solicitation. It is the responsibility of all interested parties to download this information.

Proposal Responses (**an original plus four (4) copies**) should be mailed or hand-delivered in a sealed envelope marked “**LOI # 7448314: Waste Water Treatment Facilities –Energy Upgrades**” to:

RI Dept. of Administration
Division of Purchases, 2nd floor
One Capitol Hill
Providence, RI 02908-5855

NOTE: Proposals received after the above-referenced due date and time may not be considered. Proposals misdirected to other State locations or which are otherwise not presented in the Division of Purchases by the scheduled due date and time will be determined to be late and may not be considered. Proposals faxed or emailed to the Division of Purchases will not be considered. The official time clock is located in the reception area of the Division of Purchases

Proposal Evaluation Premises

Proposers must meet the following minimum requirements:

1. Propose an eligible project under the Rules and Regulations for Energy Efficiency Wastewater Treatment Program.
2. Administrative costs must not exceed ten percent (10%) of the total award.
3. Comply with the requirements in Section 5.

Proposal Elements

At a minimum, proposals shall contain the following elements:

1. A completed and signed three-page RIVIP generated bidder certification cover sheet (downloaded from the RI Division of Purchases Internet home page at www.purchasing.ri.gov).
2. A completed and signed W-9 Form downloaded from the RI Division of Purchases Internet home page at www.purchasing.ri.gov by clicking on RIVIP, then General Information and then Standard Forms.

3. A printed confirmation of registration with the Central Contractor Registry (CCR). Applicants can register at <https://www.bpn.gov/ccr/default.aspx>. Please allow for up to 5 business days for registration confirmation.
4. The DUNS number of the applicant. A DUNS number may be obtained through Dun and Bradstreet at <https://eupdate.dnb.com/requestoptions.asp>.
5. A printed confirmation of receipt of an frpin. The frpin is required for federal reporting under the Recovery Act. An frpin may be obtained at www.federalreporting.gov. Please allow for up to 5 business days for receipt of an frpin.
6. A project plan as defined in the scope of services in Section 2 above.
7. Qualification statement for the Local Governmental Unit, including, but not necessarily limited to:
 - a. The experience of the Local Governmental Unit or, for a team, the experience of each team member in overseeing Wastewater Treatment Facilities.
 - b. The experience of key firm or team members in overseeing facilities upgrades.
 - c. An organization chart for the project team indicating the name of the team member, the team reporting structure and a narrative describing the responsibility of the team member. The organizational chart should include each of the duties required per the project plan.
 - d. Other information at the discretion of the proposer that will demonstrate the firm or team's ability to meet the State's goals for this project.
8. Project budget including administrative costs.
9. A project schedule including all major activities from notice to proceed to project operation.
10. An itemized list of proposed equipment purchases that complies with the Buy American provision of the Recovery Act.
11. A Recovery Act compliance proposal including progress report reporting as described in Section 5 and as may be amended to comply with additional reporting guidance from the State and/or the United States Department of Energy. Failure to comply with the Recovery Act may result in termination of award. This compliance proposal should include details on how the applicant will ensure that:
 - a. Prevailing Wage Rates are paid to any subcontractors. Prevailing wage instructions for the State of Rhode Island are found at: <http://www.dlt.state.ri.us/pw/>.
 - b. Weekly certified payrolls will be gathered by the applicant and sent to the Office.

- c. The applicant will monitor subcontractors for compliance with Davis-Bacon prevailing wage requirements.
- d. Documentation of subcontractor certification of compliance with the Buy-American provision of the Recovery Act is sent to the Office prior to the commencement of work (information may be found at: <http://www.energy.ri.gov/cities/guidance.php>).
- e. Quarterly reporting per Section 1512 of the Recovery Act will be performed in full and on time. This includes sending all job-hour data for the applicant and all subcontractors to the Office 10 business days before the close of any quarter and filling out financial reports at www.federalreporting.gov by the 10th of the month following the close of any quarter.
- f. Compliance with the National Environmental Policy Act (NEPA). The Federal Department of Energy (DOE) has issued a Categorical Exemption from further review under NEPA for energy efficiency upgrades in wastewater treatment facilities. Renewable energy systems may require further NEPA review by the DOE, however, and as such no work should begin on such a system until authorization from the Office is received.
- g. The applicant will keep on file and provide the Office with a waste stream management plan that details how all removed equipment and construction debris will be disposed of.

12. In addition to the multiple hard copies of proposals required, Respondents are requested to provide their proposal in electronic format (CDRom or Diskette). Microsoft Word / Excel OR PDF format is preferable. Only 1 electronic copy is requested. This CD or diskette should be included in the proposal marked “original”.

Proposal Evaluation Criteria.

Complete proposals, which include all necessary Recovery Act Assurances, will be ranked based on the following evaluation criteria:

Criterion	Weight	Considerations
Application Quality and Project Need	20%	1. Quality of project plan
	10%	2. Age and/or condition of any equipment to be replaced
	20%	3. Damage caused to the WWTF by a declared emergency
Energy/Cost Savings	15%	1. Energy Savings (kWh equivalents)
	10%	2. Cost Savings (USD/year – potential sewer rate stabilization)
Recovery Act Benefits	10%	1. Creation and retention of jobs (total project job-hours)
	15%	2. Shovel-ready nature of project (project schedule)

Notwithstanding the above, the State reserves the right not to award this contract or to award on the basis of cost alone, to accept or reject any or all responses, and to award in its best interest.

Responses found to be technically or substantially non-responsive at any point in the evaluation process will be rejected and not considered further. The State reserves the right to reject any or all responses submitted and to waive any informalities in any vendor’s submission

A Selection Committee will evaluate submitted proposals on the basis of the above criteria items. Consultant Teams may be invited to appear before the Committee for in-person presentations. The Committee will then make a qualifications based recommendation for final selection to the Rhode Island State Purchasing Agent, or her designee, who will make the final award decision.

Respondents are advised that reimbursable expenses, to include sub-consultant services, that may be included in the contract award resulting from this solicitation shall not exceed actual cost incurred x 1.06.

SECTION 5 -- SPECIAL TERMS AND PROVISIONS APPLICABLE TO RECEIPT OF STATE ENERGY PROGRAM FUNDS

**SUPPLEMENTAL TERMS AND CONDITIONS FOR
CONTRACTS AND SUBAWARDS FUNDED IN WHOLE OR IN PART BY THE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUB. L. NO. 111-5**

1. Definitions

- a. "ARRA" or "Recovery Act" means the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat.115.
- b. "ARRA Funds" means any funds that are expended or obligated from appropriations made under ARRA.
- c. "ARRA Requirements" means these Supplemental Terms and Conditions, as well as any terms and conditions required by: ARRA; federal law, regulation, policy or guidance; the federal Office of Management and Budget (OMB); the awarding federal agency; or, the Rhode Island Office of Economic Recovery and Reinvestment (OERR).
- d. "Contract" means the contract to which these Supplemental Terms and Conditions are attached, and includes an agreement made pursuant to a grant or loan subaward to a Sub-Recipient.
- e. "Contractor" means the party or parties to the Contract other than the Prime Recipient and includes a subgrantee or a borrower. For the purposes of ARRA reporting, Contractor is either a Sub-Recipient or a Recipient Vendor under this Contract.
- f. "Prime Recipient" means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.
- g. "Recipient Vendor" means a Vendor that receives ARRA Funds from a Prime Recipient.

- h. "Subcontractor" means any entity engaged by Contractor to provide goods or perform services in connection with this contract.
- i. "Sub-Recipient Vendor" means a Vendor that receives ARRA Funds from a Sub-Recipient.
- j. "Sub-Recipient" means a non-Federal entity receiving ARRA Funds through a Prime Recipient to carry out an ARRA funded program or project, but does not include an individual that is a beneficiary of such a program. The term " Sub-Recipient" is intended to be consistent with the definition in OMB Circular A-133 and section 2.2 of the June 22, 2009 OMB Reporting Guidance.¹ A Sub-Recipient is sometimes referred to as a subgrantee.
- k. "Supplemental Terms and Conditions" means these Supplemental Terms And Conditions For Contracts And Subawards Funded In Whole Or In Part By The American Reinvestment Recovery Act Of 2009, Pub. L. No. 111-5, as may be subsequently revised pursuant to ongoing guidance from the relevant federal or State authorities.
- l. "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the project or program funded by ARRA. The term "Vendor" is intended to be consistent with the definition in OMB Circular A-133 and section 2.2 of the June 22, 2009 OMB Reporting Guidance.

2. **General**

- a. To the extent this Contract involves the use of ARRA Funds, Contractor shall comply with both the ARRA Requirements and these Supplemental Terms and Conditions, except where such compliance is exempted or prohibited by law.
- b. The Contractor acknowledges these Supplemental Terms and Conditions may require changes due to future revisions of or additions to the ARRA Requirements, and agrees that any revisions of or additions to the ARRA Requirements shall automatically become a part of the Supplemental Terms and Conditions without the necessity of either party executing or issuing any further instrument and shall become a part of Contractor's obligations under the Contract.. The State of Rhode Island may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. **Conflicting Terms**

Contractor agrees that, to the extent that any term or condition herein conflicts with one or more ARRA Requirements, the ARRA Requirements shall control.

¹ Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009, M-09-21 (June 22, 2009), available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf.

4. **Enforceability**

Contractor agrees that if it or one of its subcontractors or sub-recipients fails to comply with all applicable federal and State requirements governing the use of ARRA funds, including any one of the terms and conditions specified herein, the State may withhold or suspend, in whole or in part, funds awarded under the program, recover misspent funds, or both. This provision is in addition to all other civil and criminal remedies available to the State under applicable state and federal laws and regulations.

5. **Applicability to Subcontracts and Subawards**

Contractor agrees that it shall include the Supplemental Terms and Conditions set forth herein, including this provision, in all subcontracts or subawards made in connection with projects funded in whole or in part by ARRA, and also agrees that it will not include provisions in any such subcontracts or subawards that conflict with either ARRA or the terms and conditions herein.

6. **Availability of Funding**

Contractor understands that federal funds made available by ARRA are temporary in nature and agrees that the State is under no obligation to provide additional State-financed appropriations once the temporary federal funds are expended.

7. **Inspection and Audit of Records**

Contractor agrees that it shall permit the State and its representatives, the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to:

- i. Examine, inspect, copy, review or audit any records relevant to, and/or involve transactions relating to, this agreement, including documents and electronically stored information in its or any of its subcontractors' or sub-recipients' possession, custody or control unless subject to a valid claim of privilege or otherwise legally protected from disclosure; and
- ii. Interview any officer or employee of the Contractor regarding the activities and programs funded by ARRA.

8. **Registration Requirements**

- a. **DUNS Number Registration.** Contractor agrees: (i) if it does not have a Dun and Bradstreet Data Universal Numbering System (DUNS) Number, to register for a DUNS Number within 10 business days of receiving this Contract; (ii) to provide the State with its DUNS number prior to accepting funds under this agreement; and (iii) to inform the State of any material changes concerning its DUNS number.

- b. **Central Contractor Registration.** To the extent that Contractor is a Sub-Recipient, it agrees: (i) to maintain a current registration in the Central Contractor Registration (CCR) at all times this agreement is in force, (ii) to provide the State with documentation sufficient to demonstrate that it has a current CCR registration, and (iii) to inform the State of any material changes concerning this registration.
- c. **FederalReporting.gov Registration.** To the extent that Contractor is a Sub-Recipient, it agrees: (i) to register on FederalReporting.gov within 10 business days of receiving this subaward; (ii) to maintain a current registration on FederalReporting.gov at all times this agreement is in force; (iii) to provide the State with documentation sufficient to demonstrate that it has a current registration on FederalReporting.gov, and (iv) to inform the State of any material changes concerning this registration.

9. Reporting Requirements under § 1512 of ARRA

- a. Contractor agrees to provide the State with data sufficient to fulfill the State's ARRA reporting requirements within the timeframes established by State or federal law, regulation or policy, including but not limited to section 1512 reporting requirements.
- b. To the extent that Contractor is a Sub-Recipient with a Subaward having a total value of greater than \$25,000, it agrees to report directly to the Federal government the information described in section 1512(c) of ARRA using the reporting instructions and data elements available online at FederalReporting.gov, and ensure that any information that is prefilled is corrected or updated as needed. Information from these reports will be made available to the public.
- c. To the extent that Contractor is a Sub-Recipient with a Subaward having a total value of greater than \$25,000, it accepts delegation of reporting responsibility of FFATA data elements required under section 1512 of ARRA for payments from the State. Sub-Recipient shall utilize the federal government's online reporting solution at www.FederalReporting.gov. Reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by ARRA.
- d. To the extent that Contractor is a Sub-Recipient with a Subaward having an initial total value of less than \$25,000, but is subsequently modified to exceed \$25,000, Contractor agrees that subsections (b) and (c) above apply after the modification.

10. Buy American Requirements under § 1605 of ARRA

- a. Contractor agrees that, in accordance with section 1605 of ARRA, it will not use ARRA funds for a project for the construction, alternation, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. In addition to the

foregoing Contractor agrees to abide by all regulations issued pursuant to section 1605 of ARRA.

- b. Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in section 1605 of ARRA and federal regulations issued pursuant thereto.

11. Wage Rate Requirements under § 1606 of ARRA

- a. Contractor agrees that it will comply with the wage rate requirements contained in section 1606 of ARRA, which requires that, notwithstanding any other provision of law, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in Rhode Island is available at <http://www.gpo.gov/davisbacon/ri.html>.
- b. Contractor agrees that it will comply with all federal regulations issued pursuant to section 1606 of ARRA, and that it will require any subcontractors or sub-recipients to comply with the above provision.

12. Required Jobs Data Reporting under § 1512(c)(3)(D) of ARRA

- a. Contractor agrees, in accordance with section 1512(c)(3)(D) of ARRA and section 5 of the June 22, 2009 OMB Reporting Guidance (entitled "Reporting on Jobs Creation Estimates and by Recipients"), to provide an estimate of the number of jobs created and the number of jobs retained by ARRA-funded projects and activities. In order to perform the calculation, the Contractor will provide the data elements listed in sub-section (b) below.
- b. Contractor agrees that, no later than two business days after the end of each calendar quarter, it will provide to the State the following data elements using a form specified by the State:
 - i. The total number of ARRA-funded hours worked on this award.
 - ii. The number of hours in a full-time schedule for a quarter.
 - iii. A narrative description of the employment impact of the ARRA funded work. This narrative is cumulative for each calendar quarter and at a minimum, shall address the impact on the Contractor's workforce and the impact on the workforces of its subcontractors or sub-recipients.
- c. Contractor agrees that, in the event that the federal government permits direct reporting of section 1512(c)(3)(D) jobs data by sub-recipients or vendors, it will

directly report jobs data to the federal government, consistent with any applicable federal law, regulations and guidance.

13. Segregation of Funds

- a. Contractor agrees that it shall segregate obligations and expenditures of ARRA funds from other funding it receives from the State and other sources, including other Federal awards or grants.
- b. Contractor agrees that no part of funds made available under ARRA may be commingled with any other funds or used for a purpose other than that of making payments in support of projects and activities expressly authorized by ARRA.

14. Disclosure pursuant to the False Claims Act

Contractor agrees that it shall promptly refer to an appropriate Federal Inspector General any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

15. Disclosure of Fraud, Waste and Mismanagement to State Authorities

Contractor shall also refer promptly to the Rhode Island Department of Administration, Department of Purchases, any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has committed a criminal or civil violation of State or Federal laws and regulations in connection with funds appropriated under ARRA.

16. Prohibited Uses of ARRA Funds

- a. Contractor agrees that neither it nor any subcontractors or sub-recipients will use the funds made available under this agreement for any casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools, or similar projects.
- b. Contractor agrees that neither it nor any subcontractors or sub-recipients will use the funds made available under this agreement in a manner inconsistent with any certification made by the Governor or any other State official pursuant to the certification requirements of ARRA, which are published online at <http://www.recovery.ri.gov/certification/>.

17. Whistleblower Protection under §1553 of ARRA

- a. Contractor agrees that it shall not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosures by the employee of information that he or she reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to covered funds; (2) a gross waste of covered

funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds; (4) an abuse of authority related to the implementation or use of covered funds; or (5) a 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.

- b. Contractor agrees to post notice of the rights and remedies available to employees under section 1553 of ARRA.

Please note that the State will strictly enforce compliance with all ARRA Requirements and these Supplemental Terms and Conditions. Accordingly, all Contractors should familiarize themselves with these Supplemental Terms and Conditions as well as all ARRA Requirements as they relate to this LOI.