

BEMIDJI CITY COUNCIL
Special Work Session Agenda
Monday, January 24, 2011

City Hall
Conference Room
6:30 P.M.



1. CALL TO ORDER / ROLL CALL

2. ACCEPT OR DECLINE THE STATE GRANT FOR SOLAR PANEL PROJECT

3. ADJOURNMENT

COUNCIL AGENDA ITEM



Meeting Date: January 24, 2011

Action Requested: Accept or Decline the State Grant for Solar Panel Demonstration Project

Prepared By: John M. Chattin, City Manager

City staff has been contacted by Phil Carlson, Boonestroo, (e-mail attached) regarding deadlines set by the Minnesota Department of Commerce, Office of Energy Security, in regards to the State Grant tentatively awarded to the City for the solar panel demonstration project at the Sanford Center. Also attached is a draft grant contract agreement for the grant.

To the point, the deadlines force the City's hand into making a decision regarding accepting or declining the grant. Recall that the Council was going to wait until after a tentative review in February of the contingency fund balance for the event center construction. These deadlines will not permit the leisure of waiting until that time. Accepting the grant commits the City to a \$160,200 match.

If you have any questions prior to Monday night's meeting, please don't hesitate to ask.

Recommendation:

Accept or decline the Minnesota State Grant for the Solar Panel Demonstration Project.

Kay Murphy

From: Alan R. Felix
Sent: Thursday, January 20, 2011 2:22 PM
To: Kay Murphy
Subject: FW: MN State Grant - Local Government Renewables

From: Carlson, Phil J. [<mailto:Phil.Carlson@bonestroo.com>]
Sent: Thursday, January 20, 2011 8:58 AM
To: John Chattin; Ron Eischens; Alan R. Felix; ebaileyjohnson@bemidjistate.edu
Cc: Sherry Rutledge; Osa, Rick H; Blank, JoAnne J
Subject: RE: MN State Grant - Local Government Renewables

John,

I see two dates here that are critical:

- Feb. 6 is the deadline on the waiver to "Buy American". After that date we need to buy all American-made goods. Before that we need to show we have "taken significant steps" to purchase solar panels and we get in under the waiver. We could get a contract by Jan. 31 and order panels in the week before Feb. 6, which I would interpret as a "significant step".
- January 31 is the start of the project, with other dates noted at various stages in the contract. We (Bonestroo) anticipate we can meet those design, construction and installation deadlines – it is not a large project. However the City needs to authorize the project in order to get started.

Those are nuts and bolts of getting it built. The central question in your email is, where will the money come from? I believe others are pursuing contributions, grants and other sources in and around Bemidji. I don't know the status of those discussions. We have looked, and are not aware of other grants at this time, beyond this ARRA grant, that could serve this project.

Obviously if the funds are not there and there is no desire on the part of the City Council to pursue the project, it ends there. This has been the situation since last summer when we began going after the ARRA grant - the gap was always there. Erika or others could let us know if there is any news that would keep the project alive.

Phil Carlson, AICP

Associate
Direct 651-967-4555
Cell 612-202-6474
phil.carlson@bonestroo.com



Visit the new Bonestroo.com to sign-up for SourceONE, our upcoming newsletter.

From: John Chattin [<mailto:jchattin@ci.bemidji.mn.us>]
Sent: Thursday, January 20, 2011 8:27 AM
To: Ron Eischens; Alan R. Felix; Carlson, Phil J.; ebaileyjohnson@bemidjistate.edu
Cc: Sherry Rutledge
Subject: RE: MN State Grant - Local Government Renewables

I don't know why we would accept this grant knowing that we cannot meet any of the timelines proposed? I also do not believe the council will approve a significant portion of the \$165,000. How will we be viewed for future grants if we accept this and then do not complete the project? Someone needs to tell me how we will get this done.

John Chattin
Bemidji City Manager
317 4th St NW
Bemidji, MN 56601
Office: (218) 759-3565
Cell: (218) 368-9316

From: Ron Eischens
Sent: Thursday, January 20, 2011 8:03 AM
To: John Chattin; Alan R. Felix; 'phil.carlson@bonestroo.com'; 'ebaileyjohnson@bemidjistate.edu'
Cc: Sherry Rutledge
Subject: FW: MN State Grant - Local Government Renewables

Let me know if anyone has questions, concerns or changes to the draft grant language by Tuesday of next week.

If I don't hear from anyone by then I will let Natalie that we approve of the draft contract. thanks

From: Contracts, Energy (COMM) [<mailto:Energy.Contracts@state.mn.us>]
Sent: Wednesday, January 19, 2011 4:28 PM
To: Ron Eischens
Cc: Miller, Stacy (COMM)
Subject: MN State Grant - Local Government Renewables

Hello,

Attached is a draft of the State of MN grant agreement for the Local Government Renewable Energy RFP the City of Bemidji was awarded. Please review the agreement and let me know if you have any questions or changes.

NOTE:

Also, attached to this email is Attachment 1 of the grant agreement. Attachment 1 includes required Federal Department of Energy flow down that the State has been mandated to put in all grant agreements.

Once I receive confirmation and the additional information required from you then I will proceed with having it routed for signature. This process involves internal review and then I will send two hard copies to you to be signed and then they are returned back to our office for final signature. I have indicated a start date of 01/31/11 for the grant agreement to be fully executed, if we can obtain all required signatures by that date.

Thank you!
Natalie

Natalie Buys
Grant Specialist - Office of Energy Security
Minnesota Department of Commerce
651.284.3271

CONFIDENTIALITY NOTICE: This e-mail is confidential and may contain legally privileged information. If you are not the intended recipient, you should not copy, distribute, disclose or use the information it contains, please e-mail the sender immediately and delete this message from your system. Note: e-mails are susceptible to corruption, interception and unauthorized amendment; we do not accept liability for any such changes, or for their consequences. You should be aware that we may monitor your e-mails and their content.

STATE OF MINNESOTA
GRANT CONTRACT

This grant contract is between the State of Minnesota, acting through its commissioner of Commerce ("State") and City of Bemidji, 317 4th Street NW, Bemidji, MN 56601-3116 ("Grantee").

Recitals

1. Under Minnesota Statute §216C.02 Subdivision 1, the State is empowered to enter into this grant.
2. The State is in need of assistance in the promotion of renewable energy resources.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State.

Grant Contract

1 Term of Grant Contract

1.1 **Effective date:** 01/31/2011, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

The Grantee must not begin work under this grant contract until this contract is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.

1.2 **Expiration date:** 11/30/2011, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; 15. Data Disclosure; and Exhibit A, Section C.

2 Grantee's Duties

The Grantee, who is not a state employee, will execute the duties set forth in Exhibit A, incorporated herein by reference.

3 Time

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

4 Consideration and Payment

4.1. **Consideration.** The State will pay for all services performed by the Grantee under this grant contract as follows:

4.1.1. **Compensation.** The Grantee will be paid the lesser of **One Hundred Thousand** dollars (\$100,000.00) or **Thirty-Eight and Four Hundred Thirty-Two Thousandths** of a percent (38.432%) of actual eligible costs incurred in the performance of the Grantee's duties according to the breakdown of costs contained in the grant budget (Exhibit B) which is attached to and incorporated into this grant contract.

4.1.2. **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will not exceed **Zero** dollars (\$0); provided that the Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

4.1.3. **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed **One Hundred Thousand** dollars (\$100,000.00) or **Thirty-Eight and Four Hundred Thirty-Two Thousandths** of a percent (38.432%) of the total actual, eligible costs incurred in the performance of the Grantee's duties specified in Exhibit A.

4.2. **Matching Requirements.** The Grantee certifies that the following matching requirement for the grant contract will be met by Grantee: No less than **Sixty-One and Five Hundred Sixty-Nine Thousandths** of a percent (61.569%) of the total actual, eligible costs incurred in the performance of the Grantee's duties specified in Exhibit A.

4.3. **Payment**

- 4.3.1. **Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the schedule as outlined in Exhibit A.
- 4.3.2. **Federal funds.** Payments under this grant contract will be made from federal funds obtained by the State through the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee's failure to comply with federal requirements. These requirements include, but are not limited to, Title III, part D, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.* and amendments thereto); U.S. Department of Energy Financial Assistance Rules (10CFR600); and Title 2 of the Code of Federal Regulations.

5 **Conditions of Payment**

All services provided by the Grantee under this grant contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 **Authorized Representative**

The State's Authorized Representative is **Stacy Miller**, Project Manager, 651-282-5091, or their successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is **Ron Eischens**, Finance Director, 218-759-3568, or their successor. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

7 **Assignment, Amendments, Waiver, and Grant Contract Complete**

- 7.1 **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this grant contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this grant contract, or their successors in office.
- 7.2 **Amendments.** Any amendment to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.
- 7.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or its right to enforce it.
- 7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 **Liability**

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

9 **State Audits**

Under Minn. Stat. §16C.05, subd. 5, the Grantee's books, records, documents, and accounting procedures and practices relevant to this grant contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract.

10 Government Data Practices and Intellectual Property

10.1. **Government Data Practices.** The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released.

10.2. **Intellectual Property Rights.** Grantee represents and warrants that materials produced or used under this grant contract do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. Grantee shall indemnify and defend the State, at Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the materials infringe upon the intellectual property rights of another. Grantee shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to reasonable attorneys' fees arising out of this grant contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in Grantee's or the State's opinion is likely to arise, Grantee shall, at the State's discretion, either procure for the State the right or license to continue using the materials at issue or replace or modify the allegedly infringing materials. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

11 Workers' Compensation

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12 Publicity and Endorsement

12.1. **Publicity.** Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract.

12.2. **Endorsement.** The Grantee must not claim that the State endorses its products or services.

13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

14.1 **Termination by the State.** The State may cancel this grant contract at any time, with or without cause, upon 30 days written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

- 14.2 **Termination for Cause.** The State may cancel this Grant Contract immediately if the State finds that there has been a failure to comply with the provisions of this Grant Contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.
- 14.3 **Termination for Insufficient Funding.** The State may immediately terminate this Grant Contract if: 1) funding for Grant No. **DE-EE0000164** is withdrawn by the US Department of Energy; 2) it does not obtain funding from the Minnesota Legislature, or other funding source; or 3) if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Grant Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15 Data Disclosure

Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

16 Davis-Bacon Act (DBA) Requirements

Section 1606 of ARRA requires that all laborers and mechanics employed by contractors and subcontractors on construction, alteration, or repair projects funded directly by or assisted in whole or in part by ARRA Funds shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 USC 3145, the United States Department of Labor has issued regulations 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Wage determinations can be found at: www.wdol.gov and additional information on DBA Requirements can be found at: www.dol.gov/esa/whd.

This contract does not explicitly or implicitly require that a scope of work proposed to satisfy the outcomes of the Grantee's Program must include activities of a nature and scope that require DBA compliance. However, if proposed work includes such activities, the state will hold the Grantee responsible for all federal requirements involving DBA wages and reporting. It is the responsibility of the Grantee to determine if DBA wages will apply to their program. Additional information on Davis-Bacon Act Requirements is located in Exhibit C, which is attached and incorporated into this agreement.

17 Waste Management Plan

The Grantee is required to comply with all Federal, state and local regulations for waste disposal for projects funded through the Grantee's program. The grantee must address waste generated by the project, if applicable, and describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead paint, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the project.

18 Compliance with National Historic Preservation Act

Prior to the expenditure of federal funds, if applicable, projects must be evaluated to determine if they are subject to review under Section 106 of the National Historic Preservation Act (NHPA) of 1966 (36CFR 800). Section 106 applies to projects that may affect properties listed in or eligible for listing in the National Register of Historic Places. Properties meeting the following criteria will be subject to Section 106 review:

- Is at least 45 years old; and
- Listed in or eligible for listing in the NRHP (either individually or as part of a district);

- Any project involving ground disturbing activity (excavation, utility installation, etc.).

It is the responsibility of the Grantee to provide information needed to complete the Section 106 evaluation. Intentional efforts to circumvent these requirements by altering or damaging a historic property that is a candidate for federal grant funding will be construed as “anticipatory demolition” as defined in section 110k of the NHPA as follows:

Section 110 [16 U.S.C. 470h-2(k) — *Anticipatory demolition*]; (k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106 of this Act, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the [Advisory Council on Historic Preservation], determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

Initiating a grant funded project before reviews required under Section 106 of the NHPA have been completed may cause significant delays in the release of grant funds, require negotiated mitigation, or result in an outright loss of federal funding.

19 Disadvantaged Business Enterprises

Projects funded in whole or in part from funds received by the Grantee directly from this grant contract must, to the extent practicable, ensure that bidding contractors are qualified and participate in available apprentice and training programs for all work performed. Bidding for contracts must, to the extent practicable, use the process established in Minnesota Statutes, section 16C.16, subdivision 4, 5, 6 and 7, except that subdivision 12 does not apply.

20 Buy American

The Grantee confirms that, if applicable, it is in compliance with the Buy American provision in the American Reinvestment and Recovery Act of 2009 (ARRA) (Section 1605 of Title XI) which directs that, subject to certain exceptions, no funds appropriated or otherwise made available for a project may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all the iron, steel, and manufactured goods used are produced in the United States.

A Grantee requesting a determination regarding the inapplicability of the Buy American restrictions for lack of quantity or quality, increase of cost of the project by more than 25 percent, or inconsistency with the public interest, must be submitted to the State prior to the execution of the grant agreement. The prospective Grantee shall include the information and applicable supporting data required by 2 CFR 176.140(c) and (d) in the request. Exceptions must be approved by the State and the United States Department of Energy.

Additional information, including category exclusions and exceptions, on Buy American can be found at: www1.eere.energy.gov/recovery/buy_american_provision.html.

21 Reporting

Section 1512 of the American Recovery and Reinvestment Act of 2009 (ARRA) states recipients of “Recovery Act funds must comply with the extensive reporting requirements.” Laws of Minnesota 2009, Chapter 138, Article 5, Section 2 (accountability and transparency reporting) specifies additional recipient reporting requirements related to ARRA funding.

- A) Monthly, the Grantee must submit progress reports detailing the progress and tasks completed of the grant agreement funded in whole, or in part, with ARRA funding including percent of project completion to the State by the 5th day of each month for the preceding month’s work.

B) Quarterly, the Grantee must submit additional grant related information, including but not limited to data regarding hiring practices for jobs retained or created under this agreement and information related to training where applicable. The Grantee shall report this information on a form prescribed by the State which must be submitted to the State by the 5th day of each month following the end of the quarter for the preceding quarter's work. If the grant contract ends prior to the end of the quarter, the Grantee shall submit all data relevant to this requirement for that quarter up to the end date of the grant contract and submit it with the final report.

If a Grantee does not comply with these requirements the State reserves the right to withhold funding.

22 Compliance with U.S. Department of Energy's Flow Down Requirements

It is the responsibility of the Contractor to fully understand, and be in compliance, with all U.S. Department of Energy's flow down requirements, found in Attachment 1 to this agreement.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Signed: _____

Date: _____

CFMS: _____

3. MN DEPARTMENT OF COMMERCE

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.

By: _____

Title: _____

Date: _____

2. CITY OF BEMIDJI

The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

Distribution:

MN Dept. of Commerce, Accounting Dept.
Grantee
State's Authorized Representative (copy)

By: _____

Title: _____

Date: _____

Grantee's Duties

A. GRANTEE shall do all things necessary to complete the following tasks:

Task	Description	Completion Date
Task 1	1.1 Place Solar Photovoltaic (PV) System order with selected contractor.	02/28/2011
	1.2 Design and engineer structural support for solar array.	04/30/2011
Task 2	2.1 Prepare construction drawings for the solar array.	05/31/2011
	2.2 Start construction on 25 kW Solar PV System located at the Bemidji Regional Events Center.	08/31/2011
Task 3	3.1 Commission the Solar PV System.	10/31/2011
Task 4	4.1 Monthly status reports are provided to the Office of Energy Security (OES). Reports will cover the preceding month's work completed.	5th of each month during grant
	4.2 Monthly invoices are submitted monthly to the OES. Invoices will cover the preceding month's expenditures.	5th of each month during grant
	4.3 Submit weekly Davis Bacon reports to OES during grant period, on a form prescribed by OES.	Weekly during grant
	4.4 Monitor Davis Bacon Reporting by all contractors while project is under construction.	Ongoing
	4.5 Final Report including executive summary and a final invoice are submitted to OES.	11/30/2011

B. Promotional Materials

All promotional and informational materials distributed by or for the Grantee shall contain the following statement: "This project was made possible by a grant from the U.S. Department of Energy and the Minnesota Department of Commerce through the American Recovery and Reinvestment Act of 2009 (ARRA)," unless this requirement is waived in writing by the State.

C. Reporting

Grantee further agrees to provide energy production data to demonstrate the energy production of the solar electric system for three years after the installation of the equipment. The requirement of reporting this energy data is to provide accurate documentation of actual energy production and cost-savings achieved as a result of the project being funded by this grant agreement.

Grantee's Budget

Budget: Eligible costs include actual costs incurred for labor, subcontracts, equipment, and materials. Other expenses may be eligible only if pre-approved in writing by the State's Authorized Representative.

Category	Grant Award	Match	Totals
Labor	\$3,459	\$5,541	\$9,000
Subcontracts	\$26,134	\$41,866	\$68,000
Equipment	\$43,505	\$69,695	\$113,200
Materials	\$26,902	\$43,098	\$70,000
Total Project Cost:	\$ 100,000	\$ 160,200	\$ 260,200

Clause I. Davis Bacon Act and Contract Work Hours and Safety Standards Act.

Definitions: For purposes of this clause, Clause I, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

- (1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.
- (2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."
- (3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.
- (4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.
- (5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.
- (6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.
- (7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

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

incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

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

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

(2) Withholding.

The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor

under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of

fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.