



Department of Development

Ted Strickland, Governor
Lee Fisher, Lt. Governor

Lisa Patt-McDaniel, Director

State Energy Plan-American Recovery and Reinvestment Act Transforming Waste to Value Program Request For Proposals # 10-04

Program Guidelines and Application Procedures

- RFP Released – June 25, 2010
- Bidders' Conference – July 19, 2010, 10:00 a.m. to Noon
- Written Questions – through August 2, 2010
- Proposals due by 3:00 p.m. on August 23, 2010
- Review and Award approximately – October 29, 2010

These guidelines have been developed pursuant to Division A, Title IV, Section 410, American Recovery and Reinvestment Act, 2009.

Transforming Waste to Value Program
Ohio Department of Development
Ohio Energy Resources Division
77 South High Street, 26th Floor
Columbus, Ohio 43216
Attn: Transforming Waste to Value RFP

I. OVERVIEW

To be considered for funding for the Transforming Waste to Value (TWV) Program, all interested parties must complete a two-step application process:

- 1) Submit a one-page project summary on the <http://recovery.ohio.gov/opportunities/state/> website no later than **3:00 p.m.** on **August 16, 2010**. (Applicants that have already submitted a summary at <http://recovery.ohio.gov> do not need to submit again.)

*NOTE: On the <http://recovery.ohio.gov/opportunities/state/> page, click on “**Submit your Proposal**” in the “How to Apply” box. When filling out the “Project Information” section of the form, choose the Federal Stimulus Program category “**Energy and Environment**” and the subprogram “**State Energy Program.**”

- 2) Submit a proposal to the Ohio Department of Development, Ohio Energy Resources Division no later than **3:00 p.m.** on **August 23, 2010**. The application forms may be found at: <http://www.development.ohio.gov/recovery/energy/FundingOpportunities.htm>.

In accordance with the State Energy Plan - American Recovery and Reinvestment Act (SEP ARRA) federal stimulus initiative, the Ohio Department of Development (Development), Ohio Energy Resources Division, is soliciting proposals under its TWV Requests For Proposals (RFP). The TWV Program will leverage private investments in projects that will move forward and be completed within twelve (12) months of the grant execution.

Available Grant Amount: A total of \$10,000,000 may be awarded through this competitive RFP. The minimum award amount is \$500,000 per project and the maximum award amount is \$1,000,000 per project. Development, at its discretion, may amend the maximum award amount. Qualifying proposals will be funded until all the funds available for distribution under this RFP are awarded or Development determines that this RFP no longer meets the best interest of Ohio’s Energy Plan. All applicants seeking funding from this RFP must apply utilizing the application forms provided in this RFP and the one page application on <http://recovery.ohio.gov/opportunities/state/> as outlined in item 1 above.

Goals: The goals of the State Energy Plan TWV Program are to convert feedstocks such as municipal solid wastes, food and farm wastes, or other bio-mass or waste materials to electricity, heat, fuel and/or bio-products and to create jobs. These goals will be accomplished by building market demand for Ohio manufacturers and distributors of bio-digester components, bio-mass or waste conversion equipment and electric generation equipment.

Uses of Grant Funds: Grant funds can only be used to purchase and install eligible project equipment for conversion of solid wastes, food and farm wastes or other bio-mass or waste materials to electricity, heat, fuel and or bio-products for facilities located in Ohio.

Prohibitions (Ineligible Uses of Funds): The funds for this RFP are from SEP ARRA. States are prohibited by the U.S. Department of Energy from using SEP ARRA grant funds:

- For construction, such as construction of mass transit systems and exclusive bus lanes, or for the construction, additions, or repair of buildings, or structures;
- To purchase land, a building or structure or any interest therein;
- To subsidize fares for public transportation;
- To subsidize utility rate demonstrations or State tax credits for energy conservation or renewable energy measures;
- To conduct or purchase equipment to conduct research, development or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available; or
- For gambling establishments, aquariums, zoos, golf courses, or swimming pools.

Buy America: To meet the requirements of ARRA, Development requires that all grantees adhere to the requirements of the “Buy America” provisions of ARRA. See **Appendix A** for additional requirements and details associated with receiving this type of funding.

II. DEFINITIONS

- 1) “Eligible project” means project facilities that process feedstock into useful energy and/ or bio-products.
- 2) “Feedstock” means renewable and organic material available on a recurring basis that can be converted to energy and/ or bio-products. Feedstock sources include, but are not limited to, on-farm production practices, municipal solid waste, food waste or other materials from food processing facilities, and other bio-mass material sources. Feedstock examples include, but are not limited to, agricultural commodities, algae, grasses, wood waste, stovers and/or waste materials from crop and animal production.
- 3) “Employment impacts” means economic impacts for Ohio, occurring as a result of the installation of the project equipment or measures, which include job creation and retention. Development will require the grantee to report on job creation/retention during the term of the grant agreement and continue for one year after project completion and final inspection by Development. Evidence of job creation and retention can be separated into three areas: retrofit or installation hours, new jobs directly created through the project(s), and retained jobs at the site.
 - a. “Retrofit or installation hours” - person hours required for the construction and installation of equipment required for installation of the project.
 - b. “New jobs” - a new, full-time equivalent job (based on 2080 hours worked per year) that will be directly created by this project during the period of the grant.
 - c. “Retained jobs” - An existing full-time equivalent position that is proposed to be maintained during the period of the grant with funds received through this RFP.

- 4) "Total project costs" means the dollar value associated with the installation of the project equipment or measure(s).
- 5) "Eligible costs" include:
 - a. Project engineering costs;
 - b. Equipment costs;
 - c. Installation costs; and
 - d. At Development's discretion, other expenses as may be deemed necessary for the project and not elsewhere identified as an eligible cost.

III. ELIGIBILITY

- 1) Each applicant must submit a project description and funding request and be listed on the www.recovery.ohio.gov website.
 - Individuals, businesses, and institutions that operate within the State of Ohio may apply for the Program. Eligible for-profit entities must be registered with the Ohio Secretary of State and remain in good standing to do business in the State of Ohio for the duration of the grant agreement, and eligible not-for-profit entities must be registered with the Ohio Attorney General's Office and remain in good standing to conduct activities in the State of Ohio for the duration of the grant agreement.
- 2) The applicant must be the property owner.
- 3) Each applicant must meet all applicable permitting requirements. For any project(s) selected, the awardee(s) will be responsible for obtaining the appropriate permits and providing copies of the permits to Development before any money will be disbursed. These prerequisites to disbursement include, but are not limited to, securing any applicable National Environmental Protection Act (NEPA) exemptions or clearances, compliance with any applicable building codes, and historic preservation clearance (Section 106 review) for the project. Section 106 review is required if the project would alter any structure or site that is fifty (50) years of age or older, listed on the National Register of Historic Places, or located in an historic district. Applicants **MUST** comply with the requirements of Section 106 of the National Historic Preservation Act and complete the **Historic Preservation Compliance Form**, if applicable.
- 4) Applicant must demonstrate a cost share investment of a minimum of 25% of the total cost of the project. For the purposes of the TWV Program, cost share may include any combination of local, public (non-federal), or private dollars. A higher proportional cost share investment is strongly preferred and will be accorded greater weight. Cost share investments may include eligible financial or in-kind contributions.
- 5) Project must be completed within 12 months of executing the grant agreement.
- 6) Selected applicant(s) must make public all non-proprietary project information about the project and participate in at least two (2) presentations and provide two

(2) facility tours for interested parties, as requested by Development, during the term of the grant agreement.

- 7) Applicant must submit a description of the waste management plan that addresses waste generated by the proposed project. This waste management plan must describe the process to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, lead paint, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. For more information on hazardous waste identification, see: <http://www.epa.gov/epawaste/hazard/wastetypes/wasteid/index.htm>.

IV. SELECTION CRITERIA AND SCORING

Scoring for this RFP will be done utilizing the four criteria as listed below plus a fifth bonus criterion. The scoring is based on a 150 point scale.

- 1) Project Readiness: Evidence of project's readiness to move forward and be operational within twelve (12) months following the grant execution date. Evidence includes agreements with landowners, feedstock providers, anaerobic digester technology provider, and/or gas cleanup company, engineering documents; internal capital appropriation or budgetary approval; letters of support from the community; and evidence of attempts to obtain regulatory permits.
- 2) Project Financials – Cost share, Financing, and Cost Effectiveness: A cost share higher than the 25% percent is preferred. Evidence of financing approval for balance of project costs.
- 3) Economic/ Employment Impacts for Ohio: Job creation and retention during the construction phase and operation phase. Use of Ohio manufactured components and/or ownership by an Ohio partnership or company.
- 4) Energy Impacts and Innovativeness of the Project: Waste-to-energy or waste-to-bio-product conversion performance should be described in detail. Projects that implement a co-operative component with an energy provider are desired. Applicants are encouraged to submit any information with regard to co-operative agreements with surrounding feedstock providers in order to show a coordinated effort of utilization of local feedstock management. Projects showing innovative utilization of waste streams will receive additional consideration.
- 5) Bonus Points: Bonus points equal to ten (10) points will be awarded to proposals by Applicants that are certified as any of the following: Minority Business Enterprise (MBE), Encouraging Diversity, Growth and Equity (EDGE), or Disadvantaged Business Enterprise (DBE). If any of these certifications apply to your organization, please check the appropriate box on the **Application Form**. Bonus points of up to ten (10) points may be awarded to proposals that include effective ideas and an implementation plan for actively including certified Minority Business Enterprises (MBE), Encouraging Diversity, Growth and Equity (EDGE), or Disadvantaged Business Enterprises (DBE) partners, and/or a documented plan for hiring minority employees for the project. Under no circumstances will more

than ten (10) bonus points be awarded to a single proposal.

V. FEDERAL PREVAILING WAGE DETERMINATIONS - DAVIS-BACON ACT

Projects that receive funds through the TWV Program will be subject to the provisions of the Davis-Bacon Act. The Davis-Bacon Act of 1931 is the federal law which requires the payment of geographic prevailing wages on public works projects. Additional information about complying with the Davis-Bacon Act can be obtained at:

<http://www.dol.gov/whd/programs/dbra/faqs.htm>

Additional information about ARRA requirements can be found in **Appendix A-Supplemental Terms and Conditions for Projects Funded in Whole or in Part with Monies from the American Recovery and Reinvestment Act of 2009.**

VI. APPLICATION REQUIREMENTS AND PROCESS

Proposal Procedures

Submit one original paper copy marked as “Original,” and four additional paper copies marked “Copy” of the project proposal and required attachments to:

Ohio Department of Development
Ohio Energy Resources Division
Attention: Transforming Waste to Value Program
77 South High Street, 26th Floor
P.O. Box 1001
Columbus, Ohio 43216-1001

Proposals must be received by the Ohio Department of Development, Ohio Energy Resources Division no later than August 23, 2010, at 3:00 p.m. Eastern Time. Proposals must be submitted in hard copy. No fax or e-mail submittals will be accepted. **Late submittals will not be considered.**

- Proposals must be stapled once in the upper left hand corner. **Bound copies or proposals in binders will not be considered.**

All costs of preparing and submitting proposals in response to this RFP are solely the responsibility of the applicant. Development shall not contribute, in any way, to the cost of the preparation and delivery of the proposal.

Applicants are advised there will be no opportunity to correct mistakes or deficiencies in their proposals after the submission deadline. Further, incomplete proposals will not be scored. It is the applicant's responsibility to ensure timely submission of a complete proposal. Development is under no obligation to consider a proposal which is received after the deadline or that is incomplete. Late proposals will not be scored. No supplementary or revised materials will be considered after the scheduled date for submission unless specifically requested by Development.

All information submitted in response to this RFP shall be public information unless a statutory exception exists which would exclude the information from being released to the public. Any information submitted with the proposal, which the applicant feels is a trade secret as that term is defined in ORC § 1331.61 must be conspicuously designated as such and shall be treated accordingly if the information is determined to be a trade secret under the laws of the State of Ohio. It is the applicant's sole duty to identify and mark such passages it deems trade secrets. All proposals submitted will become the property of Development and any information submitted in response to this RFP will not be returned to the applicant.

Development reserves the right to:

- Accept or reject any and all proposals if the State of Ohio determines that it is in its best interest to do so;
- Reissue the RFP requesting new proposals from qualified parties;
- Waive or modify minor irregularities in proposals received;
- Negotiate with applicants, within the requirements of the RFP, to best serve the interests of the State of Ohio;
- Require the submission of modifications or additions to proposals as a condition of further participation in the selection process;
- Fund any proposal in full or in part; and
- Adjust the dates for whatever reason it deems appropriate.

If, during the review process, Development determines that it is necessary to make further distinctions between certain applicants, it may request certain selected applicants to make a presentation to certain staff and reviewers.

Award Selection

Only projects that meet all the requirements of the Program as stated herein will be considered for grant assistance. Due to the competitiveness of the Program, not all eligible projects will receive awards. The State of Ohio reserves the right to reject any and all proposals. Further, incomplete proposals will not be scored and become the property of the State of Ohio.

VII. MONITORING AND REPORTING

Reporting will be required to be submitted on a monthly basis. Reports are due to Development by the 1st of each month. A narrative report should describe project progress during the previous period; including, outcomes of the applicant's minority employment, and MBE/EDGE/DBE inclusion efforts. Access to the site must be provided upon 48 hour notice of intent to visit the job site.

VIII. CHANGES TO THESE GUIDELINES

Development reserves the right to adjust the dates listed above for whatever reasons it deems appropriate without prior notice. Development also reserves the right to request additional information to assist in the review process, to reject any and all proposals and make no awards under this Program, to make fewer and smaller awards than anticipated, or to fund partial projects.

IX. MBE, EDGE, AND DBE BUSINESS AND MINORITY WORKER INCLUSION PLAN

Applicants for this RFP are strongly encouraged to prepare and provide Development's Ohio Energy Resources Division with an MBE/EDGE/DBE Business Inclusion Plan on how it plans to provide contract opportunities to certified MBE/EDGE businesses and/or certified DBE contractors as part of its outreach and inclusion efforts and how it plans to recruit and provide jobs to minority workers. An applicant with an acceptable MBE/EDGE/DBE participation plan may receive up to an additional 10 points that will be added to the proposal's overall score.

Minority Business Enterprise (MBE): In order to be certified as a MBE, the business must be 51% or more owned and controlled by owner(s) who are members of one or more of the following groups: Blacks, American Indians, Hispanics and Asians. For certification information and application, please see: www.MBE.ohio.gov.

Encouraging Diversity, Growth and Equity (EDGE): To be eligible as a certified EDGE participant requires a small, socially and economically disadvantaged business enterprise be owned and controlled by U.S. citizens who are Ohio residents. For certification information and application, please see: www.EDGE.ohio.gov.

Disadvantaged Business Enterprise (DBE): To be eligible as a certified DBE participant, a firm must be at least 51% or more owned and controlled by a socially and economically disadvantaged individual, a U. S. citizen or lawful permanent resident, meets the Small Business Administration's (SBA's) size standard and does not exceed \$20.41 million in gross annual receipts, and be organized as a for-profit business. For certification information and application, please see: www.ohiouncp.org.

Additionally, all grantee organizations will be required on a quarterly basis to submit a Small & Minority Business Utilization Report to Development's Ohio Energy Resource Division's Director and to Development's Minority Business Enterprise Division's (MBED) contract compliance officer. The reports must include the following:

- Total dollars awarded to Minority Business Enterprises (MBE), Encouraging Diversity, Growth and Equity (EDGE) businesses, Disadvantaged Business Enterprises (DBE)
- Percentage of dollars subcontracted to these groups
- Total number of minority workers hired by diversity category
- Documents of outreach efforts to offer contract opportunities to minority firms

The MBED contract compliance officer will provide to successful applicants the proper reporting documents needed to report its utilization efforts. Development's contract compliance officer will report grantees performance in this area to the Director of Development, Development's Chief Operating Officer, Development's Director of MBED, and the Director of the Ohio Energy Resources Division, and make recommendations for corrective action when an analysis of the report reveals that the organization has failed to make a concerted effort to comply with its' MBE, EDGE and DBE Inclusion Plan requirements. Adherence to the corrective action plan would be required in order to continue receiving funds.

X. OHIO DEPARTMENT OF DEVELOPMENT CONTACT INFORMATION

A Bidders' Conference will be held on July 19, 2010 from 10:00 a.m. to Noon in Columbus, Ohio. Space is limited and available on a first-come, first-served basis. To register, please follow the instructions posted on Development's website at:
<http://www.development.ohio.gov/recovery/energy/documents/QuestionsandAnswers.pdf>

Applicants may submit written questions to Development until 5 pm on Monday, August 2, 2010. Instructions for submitting questions are posted on Development's website at
<http://www.development.ohio.gov/recovery/energy/documents/QuestionsandAnswers.pdf>

The questions and answers will be posted on Development's website at
<http://www.development.ohio.gov/recovery/energy/documents/QuestionsandAnswers.pdf>

Please note: Except for during the Bidders' Conference, representatives of the Ohio Department of Development or other entities involved in the evaluation process are not permitted to discuss this solicitation with any organization or individual that intends to submit an application.



**Department of
Development**

**SEP ARRA
Transforming Waste to Value Program**

Proposal Evaluation Sheet

Ohio Department of Development
Ohio Energy Resources Division
77 South High Street, 26th Floor
Columbus, Ohio 43216
Attn: Transforming Waste to Value RFP

**SEP ARRA – Transforming Waste to Value Program
Proposal Evaluation Sheet**

This evaluation sheet is for use by the Transforming Waste to Value Program RFP Review Team, which includes representatives from the Ohio Department of Development’s Energy Resources Division and Ohio Air Quality Development Authority, and other experts as Development deems appropriate to evaluate each proposal for SEP ARRA Transforming Waste to Value Program assistance.

A total of **150 points** is available when ranking each submitted proposal, allocated according to the following:

- A. Project Readiness/Implementation Plan/Risks
- B. Project Financials: Cost Share, Financing
- C. Economic/Employment Impacts for Ohio
- D. Energy Impacts and Innovativeness of the Project

An additional **10 points** may be awarded to projects that include active participation of minority-based enterprises or is a certified MBE, DBE, or EDGE business.

The items listed have been weighted appropriately to gauge the completeness and quality of each applicant’s responses.

Each evaluator must complete one (1) evaluation sheet for each proposal received. Indicate the evaluator’s name and date in the spaces provided.

Next to each item is a scoring range. For each item addressed by the applicant, rank the proposal to the degree indicated. The total evaluation score assigned to each proposal is then determined by adding the values from each section.

Evaluator Name: _____ Date: _____

Applicant Information	
Applicant Name: _____	
Project Description: _____	
Final Scoring – based upon completeness of proposal and supporting documentation provided	
Project Readiness/Implementation Plan/Risks	___ (0 – 30 Points)
Project Financials/Cost Share/Financing	___ (0 - 20 Points)
Economic/Employment Impacts for Ohio	___ (0 – 55 Points)
Energy Impacts and Innovativeness of the Project	___ (0 – 45 Points)
Total Score (out of a possible 150 points)	_____ + ___ (Add up to 10 Points bonus, if applicable)

APPENDIX A

Supplemental Terms and Conditions for Projects Funded in Whole or in Part with Monies from the American Recovery and Reinvestment Act of 2009

1. **Timely and Accurate Reporting.** The contractor shall comply with all reporting requirements outlined in Section 1512 of ARRA and such additional reporting guidance as may be issued from time to time. The Grantee's reporting must be sufficient to support the requirements of the Grantor to make timely and accurate reports to the federal agency from which the Grantor receives ARRA funds. The Grantor's reporting requirements include quarterly reporting of the amount of ARRA funds received; the amount of ARRA funds expended or obligated; detailed list of all projects or activities for which the ARRA funds were expended; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and detailed information concerning subcontracts or sub-grants including the State of Ohio.
 - a. **Separate Tracking and Reporting.** Section 1512 of ARRA mandates special reporting for expenditure of ARRA funds. ARRA funds may be used in conjunction with funds from other sources, including federal funds not provided under the authority of ARRA and State funds, to complete the Project, but tracking and reporting of ARRA funds must be separate from tracking and reporting of other funds used for the Project. The Grantee shall ensure that the grant of ARRA funds is established and maintained in its accounting system to accommodate separate tracking and reporting.
 - b. **Separate Accounts for ARRA Funds.** If required by federal law, including any rules or regulations implementing ARRA, the Grantee shall deposit and maintain funds provided under the authority of ARRA in separate accounts.
 - c. **Identification of ARRA Funds with "ARRA-" Prefix.** The Grantee is subject to the requirements of the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The Grantee shall separately identify the expenditures of funds provided under the authority of ARRA on the Schedule of Expenditures of Federal Awards ("SEFA") and, if required, the Data Collection Form (SF-SAC). The separate identification shall be accomplished by identifying expenditures of ARRA funds separately on the SEFA and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number and by including the prefix "ARRA-" in identifying the name of the federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.
 - d. **Central Contractor Registration.** During the term of this Agreement, the Grantee shall maintain a current registration in the Central Contractor Registration.
 - e. **State of Ohio Reporting Form.** The Grantee shall complete and provide to the Grantor the "OBM, Ohio Sub-Grantee and Sub-Recipient Spending Report in Compliance with ARRA Sec. 1512."
 - f. **Monthly Reporting.** The Grantee shall report its performance and spending under the Agreement monthly as provided in the Agreement, notwithstanding that the Grantor will report quarterly to federal agencies. In order to comply with reporting deadlines to which the Grantor may be subject, the Grantor reserves the right to accelerate the deadline for reports required from the Grantee.

g. Jobs Created and Retained. The Grantee shall report the number of jobs created and retained directly by the Grantee and by each of its contractors as a result of the ARRA funding provided pursuant to this Agreement, as well as an estimate of jobs created or retained elsewhere as a result of ARRA funding.

(1) “Jobs or positions created” means those new positions created and filled, or previously existing unfilled positions that are filled, as a result of ARRA funding. “Jobs or positions retained” means those previously existing filled positions that are retained as a result of ARRA funding. This description may rely on job titles, broader labor categories, or the contractor’s existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

(2) For purposes of estimating the number of jobs created and jobs retained in the United States and outlying areas, at a minimum, the estimate shall include any new positions created and any existing filled positions that were retained to support or carry out ARRA projects or activities managed directly by the recipient, and if known, by sub-recipients. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the recipient. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

(3) A job cannot be reported both as created and retained.

(4) Additional guidance will be provided for reporting jobs created and retained.

h. Additional or Modified Reporting Requirements. The Grantor may, from time to time as it deems appropriate and necessary, communicate specific instructions and requests to the Grantee concerning any additional reporting requirements related to the ARRA funds received under this Agreement.

2. Accessibility to Records and Project Sites.

a. *Comptroller General of the United States Authority to Inspect.* Pursuant to Section 902 of ARRA the Comptroller General of the United States and his representatives have the authority to:

(1) Examine any records of the Grantee and any contractor and subcontractors of the Grantee that directly pertain to, and involve transactions relating to, the contract or subcontract, or of any State or local agency administering such contract; and

(2) Interview any officer or employee of the Grantee or any of its contractors or subcontractors, or of any State or local government agency administering the contract, regarding such transactions; and

(3) Designate a time and place to examine those records and interview those officers and employees described above.

b. *Inspector General Authority to Inspect.* Pursuant to Section 1515(a) of ARRA, an Inspector General or any representative of an Inspector General has the authority to:

(1) Examine any records of the Grantee and any contractor and subcontractors of the Grantee that directly pertain to, and involve transactions relating to, the contract or subcontract, or of any State or local agency administering such contract; and

(2) Interview any officer or employee of the Grantee or any of its contractors or subcontractors, or of any State or local government agency administering the contract, regarding such transactions; and

(3) Designate a time and place to examine those records and interview those officers and employees described above.

c. *Duty to Incorporate in Contracts.* To facilitate access to records and personnel by the Comptroller General and/or an Inspector General as described in paragraphs (a) and (b), the Grantee shall include verbatim in any agreement with a contractor, and shall cause each of its contractors to include verbatim in any agreement with a subcontractor, from which the Grantee or a contractor acquires any goods or services for the Project the language set forth in paragraphs (a) and (b) of this Section 2.

3. Prohibition on Use of Funds. None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

4. Equal Employment Opportunities.

a. *Compliance with Federal Laws.* In addition to the Grantor's equal employment opportunity requirements set forth in the Agreement, the Grantee shall comply and the Grantee shall obtain the agreement of each of its contractors and any subcontractors to comply, with all of the following federal laws pertaining to civil rights and anti-discrimination:

Title VI & Title VII of Civil Rights Act of 1964
Equal Pay Act of 1962
Age Discrimination in Employment Act of 1967
Title IX of Educational Amendments of 1972
Section 504 of the Rehabilitation Act of 1973
Age Discrimination Act of 1975
Title I & Title V of Americans with Disabilities Act of 1990
Fair Housing Act
Fair Credit Reporting Act
Equal Educational Opportunities Act
Uniform Relocation Act

Failure by the Grantee to comply with these laws shall constitute a breach of a material obligation of the Grantee and may result in termination of the Agreement.

b. *Implementation Plan for Small and Disadvantaged Businesses.* The Grantee shall provide the Grantor an implementation plan for training and hiring minority and disadvantaged workers. The Grantee shall also demonstrate to the Grantor that when contractors are being hired by the Grantee, if applicable, small disadvantaged business enterprises are offered opportunities to bid on and receive contracted work on the Project. Information about the Grantee's outreach to small and disadvantaged business enterprises shall be provided to the Grantor when contracts are presented for review and approval in accordance with Section 1 of this Appendix A.

5. Job Postings. The Grantee shall post all jobs created by the Grantee resulting

from the award of the contract and the use of ARRA funds on www.ohiomeansjobs.com. The Grantee shall also require each of its contractors to post all jobs created by the contractor resulting from the award of this contract and the use of ARRA funds on www.ohiomeansjobs.com. "Jobs created" are those positions created and filled or previously existing unfilled positions that are retained as a result of ARRA funding.

6. Protections for Individuals Reporting Compliance Issues (Whistleblower Protection).

a. Pursuant to Section 1553 of ARRA, the Grantee and each of its contractors and any subcontractors are prohibited from discharging, demoting, or otherwise discriminating against any employee of the Grantee, contractor or subcontractor, as a reprisal for disclosing information that the employee reasonably believes is evidence of:

- (1) gross mismanagement of the contract relating to funds for the Project;
- (2) gross waste of ARRA funds;
- (3) substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
- (4) an abuse of authority related to the implementation of or use of ARRA funds; or
- (5) a violation of law, rule, or regulation related to the contract (including the competition for or negotiation of the contract) relating to ARRA funds.

b. ARRA authorizes an appropriate inspector general shall receive and investigate all complaints alleging a violation as described in paragraph (a) of this section.

c. All employers receiving ARRA funds, including the Grantee, its contractors and any subcontractors, shall post notice of employee rights as described above in conspicuous locations with other required employee rights information.

7. Construction Projects. For those construction projects for which the State uses ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work, the following conditions apply:

a. *Buy American*.

- (1) Products: Pursuant to Section 1605 of ARRA, all steel, iron, and/or manufactured goods used in the construction project must be produced in the United States.
- (2) Exception: The requirement set forth in clause (1) of this paragraph shall not apply if and only if the appropriate federal agency determines one of the following:
 - (a) The application of the requirement in clause (1) of this paragraph would be inconsistent with the public interest;
 - (b) That (i) the cost of domestic iron, steel, and/or manufactured goods would be unreasonable; or (ii) an insufficient amount of steel, iron, or relevant manufactured goods were produced and reasonably available in the United States; or (ii) that the steel, iron, or relevant manufactured goods is not produced in the United States. The cost of domestic iron, steel, and/or manufactured goods will be considered unreasonable when the

cumulative costs of such material will increase the overall cost of the project by more than twenty-five percent (25%).

A Grantee, its contractors, and subcontractors must comply with the above requirement unless the Grantor obtains a waiver from the appropriate federal agency stating that at least one of the above-referenced exceptions applies. The Grantee, its contractors, or subcontractors shall notify the Grantor immediately and shall cooperate with the Grantor if the Grantor determines it will seek an exception to the Buy American requirements by appealing to the appropriate federal agency pursuant to rules and regulations in 2CFR Part 176, Federal Register Volume 74, No 77 (April 23, 2009). The Buy American requirements shall be performed in a manner consistent with United States obligations under international agreements.

b. *Prevailing Wage Rates and Labor Standards.* The Grantee and each of its contractor and any subcontractors shall pay all laborers and mechanics employed by the Grantee, contractor or subcontractors, respectively, on the Project not less than the prevailing wage determined under the “Davis-Bacon Act” for similar work in the civil subdivision for which the laborers and mechanics perform the work. In addition, the Contractor and subcontractors shall pay all laborers and mechanics overtime compensation in accordance with the provisions of the “Contract Work Hours and Safety Standards Act,” 40 U.S.C. §§ 327 to 333. The Grantee, its contractors, and any subcontractors shall comply with all regulations issued pursuant to the above-referenced Acts and with all applicable federal and state laws and regulations.

8. Logos. The Grantee agrees to use the appropriate logos provided by the Grantor to indicate state or federal funding sources on all publicity or educational materials developed, in whole or in part, under this Agreement. Grantees receiving American Recovery and Reinvestment Act funding agree to display the Recovery Act Logo in a manner that informs the public that the project is a Recovery Act Investment.