REFERENCE GUIDE

ENERGY CONSERVATION ASSISTANCE ACT (ECAA)

STATE ENERGY PROGRAM (SEP)

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

This document is a guide to assist ECAA-ARRA loan Recipients in complying with the requirements of the loan agreements. Recipients are expected and encouraged to review the specific terms and conditions of their loan agreement for a complete understanding of requirements and responsibilities under the award. While this document provides guidance to loan Recipients, the terms and conditions of the loan agreement take precedence if any conflicts arise.

The Energy Commission anticipates that this reference guide may need to be revised as the various ARRA-funded programs are implemented. If this document is revised, the Energy Commission will notify ECAA-ARRA Recipients that a new version is available. All ECAA-ARRA loan Recipients are encouraged to sign up on the Energy Commission's listserver to ensure program updates are received in a timely manner. Please visit http://www.energy.ca.gov/recovery/ for more information.

1. WASTE MANAGEMENT PLANS

All ARRA funding Recipients must complete and submit a waste management plan in accordance with the guidance provided by the Energy Commission. The Energy Commission has developed a waste management plan template that should be completed and signed by the Recipient to comply with this requirement. Waste management guidance and plan template can be downloaded at http://www.energy.ca.gov/contracts/recovery.html#eecbg.

1. Recipient submits Waste Management Plan to the Commission Project Manager (CPM) before generating any waste.
2. If the plan is not complete, the CPM will provide guidance on necessary revisions. Recipient will re-submit a revised plan for Energy Commission review.
3. Once the plan is acceptable, CPM will notify Recipient in writing (via email) that the Energy Commission has accepted the completed plan.
4. Once CPM notifies Recipient that the completed plan has been accepted, Recipient may begin activities that generate waste.

Attachments: Energy Commission Waste Management Plan Guidance
Waste Management Plan Template

References: Exhibit D Paragraph 21

2. PREVAILING WAGE (DAVIS BACON ACT AND STATE PREVAILING WAGE LAW)

Review/Approval of Prevailing Wages in Subcontracts:
All ARRA funded Recipients entering into subcontracts for services to complete the objectives of their agreements must submit each such subcontract and applicable prevailing wage determination(s) to the CPM. The Energy Commission will review the information and, where prevailing wage rates apply, approve the Recipient to begin work under such subcontracts at specified wage and benefits rates. Note that this approval is not necessary if the Recipient performs its project activities with its own labor force, as prevailing wage requirements do not apply in such circumstances.

Processing Exception for ECAA-ARRA Loans: If work ***has not*** already begun on a particular subcontract, work cannot begin on that subcontract until the Energy Commission provides the prevailing wage rate approvals. If work ***has*** already begun on a subcontract, Borrower must submit the subcontract and wage determinations as soon as possible. CPM will not process payment requests for reimbursement of subcontractor expenditures until prevailing wage rates have been approved by the Energy Commission.

1. Recipient submits fully executed subcontracts and applicable prevailing wage determination(s) to CPM.
2. The Energy Commission will review the subcontract and prevailing wage determination(s) to determine the type of work anticipated and the appropriateness of the identified wage and benefit rates.
3. If acceptable, CPM will provide written approval of the identified wage and benefit rates to the Recipient. The Recipient is only authorized to begin work under the subcontract once the Energy Commission provides such written approval.
4. If the wage and benefit rates identified by the Recipient are not acceptable, CPM will reject the submittal in writing and provide further guidance to the Recipient on next steps.
5. Invoices for subcontractor expenditures will not be approved for payment until the Energy Commission provides the Recipient with written approval authorizing the Recipient to begin work under such subcontracts at specified wage and benefits rates.

Attachments: DOE Desk Guide to the Davis-Bacon Act, available at http://www1.eere.energy.gov/wip/pdfs/doe_dba_desk_guide.pdf.

What Happens if Necessary Job Classifications Do Not Appear in the Applicable Federal Wage Determination?

1. The Recipient will need to submit a Conformance Request to the Energy Commission, which will, in turn, forward the request to the U.S. Department of Labor (DOL). In making the conformance request, the Recipient is asking DOL to

"conform" the applicable federal wage determination to include the proposed additional job classification(s).

2. In order to make a conformance request the contractor performing the work must complete a Standard Form 1444 and submit the completed form to the CPM.
3. Instructions for completing Standard Form 1444 may be found at http://www.wdol.gov/db_confrmnce.aspx.
4. An explanation of the conformance process is provided in DOL's regulations, which are available at: http://www.dol.gov/dol/allcfr/Title_29/Part_5/29CFR5.5.htm (*see* 29 Code of Federal Regulations Section 5.5(a)(1)(ii)(A)).

Attachments: Standard Form 1444

Receipt of Weekly Certified Payrolls:
Recipients who have subcontracts subject to Davis-Bacon prevailing wage requirements are required to submit weekly certified payrolls to the CPM.

1. Under the Davis-Bacon Act all contractors and subcontractors performing work on federally financed or assisted construction contracts must submit, weekly, a copy of all payrolls to the Energy Commission accompanied by a signed "Statement of Compliance" certifying that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper federal or California prevailing wage rate, whichever is higher, for the work performed. *See* 29 C.F.R. § 5.5(a)(3)(ii).
2. The weekly certified payroll submission must minimally contain the following information: the name and individual identifying number (e.g., the last four digits of the employee's social security number) of each covered 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), daily and weekly number of hours worked, deductions made and actual wages paid. *See* 29 C.F.R. § 5.5(a)(3)(i). The required specifications for the Statement of Compliance are provided in 29 Code of Federal Regulations Section 5.5(a)(3)(ii)(B)(1)-(3).
3. To satisfy the requirement to submit weekly certified payrolls accompanied by a signed Statement of Compliance, grantees/borrowers may use the weekly certified payroll form prepared by the United States Department of Labor (DOL), Form WH-347, which is available at http://www.dol.gov/whd/forms/wh347instr.htm. Use of Form WH-347 is optional.
4. The Statement of Compliance must be signed by a principal of the firm who has authority to direct the payment of wages and benefits to the workers, i.e., owner or an officer such as president, treasurer, or payroll administrator. The Statement of Compliance must be submitted with an original, handwritten signature or proper electronic signature. Note: the Recipient may not simply copy or scan the Statement of Compliance and forward it to the Energy Commission.
5. Recipient submits certified payrolls each week to CPM until project is complete.

6. Energy Commission reviews certified payrolls for compliance with Davis Bacon requirements.
7. If the weekly certified payroll information is not sufficient, CPM will notify Recipient of deficiencies and will provide guidance on how to correct any deficiencies.
8. All weekly certified payrolls must be current prior to the CPM approving invoices for payment under the funding agreement.

References: Loan Agreement Paragraph 13.K, Exhibit D Paragraph 2.N, Exhibit D Paragraph 22, Exhibit D Attachment 7

3. PERMITS

Recipients must obtain all required permits and retain permit information for audit purposes.

References: Exhibit D Paragraph 10

4. RESOLUTIONS

The Energy Commission must be in possession of an accurate and complete authorizing resolution that satisfies the minimum requirements prior to reimbursement of funds. At a minimum, resolutions must:

- Contain an accurate and complete description of the project.
- Acknowledge acceptance of award up to $ (specific dollar amount).
- Make a determination of regarding CEQA compliance.
- Authorize a person, by title, or authorized designee, empowered to execute agreement and all future documents related to the award.
- Be approved by the Governing Authority with a signature.

References: Loan Agreement Paragraph 13.J

5. NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE (STATE HISTORIC PRESERVATION OFFICER CLEARANCE)

All projects funded must receive proper clearance under the National Historical Preservation Act (NHPA). NHPA clearance letters must: 1) reflect the measures funded by the agreement; 2) document the correct locations where each measure will be installed; and 3) not contain any conditions from the State Historic Preservation Officer (SHPO).

Recipients that have not obtained NHPA clearance must:

1. Review and follow the procedures found at the http://www.energy.ca.gov/recovery/forms/ under the heading "Update Regarding the Process for Complying with Section 106 of the National Historic Preservation Act."
2. Projects cannot begin until proper NHPA clearance is received. Project costs incurred prior to receiving NHPA clearance may be deemed unallowable and not eligible for reimbursement under the funding agreement.
3. Once proper NHPA clearance is received, Recipients may begin project activities and seek reimbursement for allowable expenditures under the grant award.

Attachments: Update Regarding the Process for Complying with Section 106 of the National Historic Preservation Act (including Attachments 1, 2, and 3)

References: Exhibit D Paragraph 15

6. PROCUREMENT STANDARDS

Recipients entering into subcontracts to complete their projects must ensure that open and fair competition is maximized when procuring goods or services. Recipients are required to follow their established procurements procedures as long as they comply with all applicable local, state and federal procurement requirements.

Recipients are required to maintain sufficient records to sufficiently document compliance with all applicable procurement requirements. This documentation may be requested by the Energy Commission during the course of the funding agreement and will be required at the time of audit. Failure to adhere to the procurement standards may result in the disallowance of project costs. Disallowed project costs already reimbursed by the Energy Commission to the Recipient will require the Recipient to repay those costs.

7. REGISTRATION REQUIREMENTS

Prior to beginning work, Recipients must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register with the Central Contract Registration (CCR).

DUNS website: http://www.dnb.com/US/duns_update
CCR website: http://www.ccr.gov

Recipients must maintain current registrations in the CCR at all times during which it has an active award funded with ARRA funds. A DUNS Number is one of the requirements for registration in the CCR.

8. REPORTING REQUIREMENTS

All reports must be current and adequate prior to the CPM approving invoices for payment.

OMB 1512 Monthly Reporting (via CARS): Recipients must submit reporting spreadsheets to the Energy Commission's FTP website by the 3rd day of each month until the project is complete and the final report accepted by the CPM. CPMs must review and approve each monthly report on the Commission ARRA Reporting System (CARS).

1. Recipients submit their reporting spreadsheet to the FTP website by the 3rd day of each month.
2. CPMs review monthly reporting spreadsheets for accuracy.
3. CPMs work with Recipients to correct any issues/problems/deficiencies.
4. CPMs approve monthly report by the 5th day of each month.

Please refer to the Energy Commission's "ARRA Reporting Process Reference Guide for Subrecipients" for detailed information.

Monthly Progress Reporting: Recipients must submit monthly progress reports to the CPM in accordance with the funding agreement. Progress reports provide an up-to-date narrative on the status of the project and documents any issues or problems with the project. See agreement terms and conditions for all reporting requirements. The CPM will provide a template that includes the required elements of the progress report.

1. Recipient submits progress reports to the CPM in accordance with agreement terms and conditions by the 3rd day of each month.
2. CPM reviews/approves progress report.

Final Report: Recipients must submit a final report in accordance with the funding agreement. CPMs must review and approve the final report prior to approving the final invoice for payment and/or approving release of any retention held.

1. Recipient submits draft final report to CPM 60 days after project completion.
2. CPM reviews and provides comments to Recipient.
3. Recipient finalizes report and submits to CPM.
4. CPM reviews/approves final report.

Annual Energy Use Reports: Borrower must submit annual energy savings information for three years following completion of the project.

Attachments: Loan progress report template
Annual Energy Use Report template

References: Loan Agreement Paragraph 9.D, Loan Agreement Paragraph 12, Exhibit D Paragraph 2.C, Exhibit D Paragraph 2.L

9. PAYMENT REQUEST PROCEDURES

All payment requests must be reviewed and approved by the CPM prior to authorizing reimbursement of actual expenditures incurred and paid to ensure the following:

- All reports due to date have been received and approved.
- All products due to date have been received and approved.
- All expenses are allowable, reasonable, properly documented (e.g., copies of equipment invoices/receipts, subcontractor invoices, timecards, etc.), not previously billed, and consistent with approved scope of work and budget.
- All expenses are supported with appropriate "proof of payment" to document that expenditures have been paid by the Recipient prior to reimbursement.
- Progress under the project is sufficient to warrant reimbursement of expenses. Progress may be demonstrated through one or more of the following: 1) progress reports; 2) products delivered under agreement; 3) site visits; and/or 4) emails or documented telephone conversations with recipient.

1. Recipient submits payment request to the Energy Commission's Accounting Office using the Energy Commission's Payment Request Form.
2. If Recipient is not in compliance with award terms and conditions or if payment request contains deficiencies, CPM shall immediately notify Recipient with a dispute form.
3. CPM works with Recipient to resolve the questions on the invoice. Once payment request issue(s) are resolved, CPM lifts the dispute.
4. CPM approves the payment request for reimbursement.
5. Payment is made by the State Controller's Office.

References: Loan Agreement Paragraph 3, Exhibit D Paragraph 2.K, Exhibit D Paragraph 16

10. MONITORING, VERIFICATION AND EVALUATION (MV&E)

CPMs will work with Recipients to ensure that the Energy Commission obtains the necessary information to monitor, verify and evaluate the project. Recipients must provide access to sites and records regarding the project funded by ARRA dollars.

Monitoring, Verification and Evaluation: CPM and/or the Energy Commission's MV&E contractor (KEMA, Inc.) will contact a sample of Recipients to obtain information in order to monitor, verify and evaluate the project funded by ARRA dollars. Recipient will provide information regarding:

- project equipment
- installation
- compliance with federal reporting requirements
- data needed to measure and verify electricity and fuel reductions, and associated data as necessary

NOTE: The funding agreement prohibits the Recipient from including KEMA Inc. or a related company known as KEMA Services Inc. as a participant in the project funded by ARRA.

Financial Audit: CPM and/or the Energy Commission's auditor (Perry-Smith) will contact a sample of Recipients to perform financial compliance reviews. Perry-Smith will examine compliance for federal passdown provisions such as Davis-Bacon, Buy American, etc., and will also be testing transactions, verifying expenditures, etc. Recipients will provide information on compliance with agreement terms, recordkeeping, invoices, costs, etc. Perry-Smith will contact Recipients to request information in several possible formats.

- Telephone conference to gather information.
- Desk audit where the Recipient will be required to provide documentation via mail or electronically.
- Onsite review at Recipient's office.

Site Visits/Access to Records: CPM, Energy Commission staff, U.S. Department of Energy representatives and/or Energy Commission contractors may request project records and may also visit Recipient sites to review the physical project, books and records, management control systems, etc.

References: Loan Agreement Paragraph 16, Loan Agreement Paragraph 8.D, Exhibit D Paragraph 2.F, Exhibit D Paragraph 3

11. RECOGNITION OF ARRA FUNDING

Recipient shall publicly recognize ARRA as a source of funding. CPM will provide to Recipient instructions on how to achieve this requirement.

References: Loan Agreement Paragraph 17

12. SINGLE AUDIT ACT

The Single Audit Act and Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governments, and non-profit Organizations, requires entities that expend equal to or in excess of $500,000 in a fiscal year to have an audit performed in accordance with the Single Audit Act.

All Recipients must be in compliance with the Single Audit Act prior to receiving payments from the Energy Commission. Before submitting payment requests to the Energy Commission, please ensure that you are in compliance with the Single Audit Act and cleared with the California State Controller's Office (SCO). More information on Complying with the Single Audit Report can be found at http://www.energy.ca.gov/recovery/documents/2009-08-17_OMB_A-133_The_Single_Audit_Act.pdf.

Attachment: Complying with the Single Audit Report

References: Exhibit D Paragraph 2.0.2

13. ACCOUNTING & RECORDKEEPING

Recipients must keep books and records according to the specific recordkeeping requirements in the funding agreements. Below are some of the highlights of these requirements. Please see the specific provisions for detailed requirements.

- Keep separate project records, segregating ARRA funded project.
- Maintain ARRA funds separately from other funds.
- Maintain records that identify the source and application of ARRA funds.
- Keep accounting records with documentation such as cancelled checks, paid bills, payrolls, time and attendance records and subcontract documents.
- Identify specific information for each subawardee.
- Energy Commission may request utility bill data to track energy savings and greenhouse gas reduction impacts

Maintain records for a minimum of 3 years after the loan is repaid or three years after the federal (U.S. Department of Energy) grant term, whichever is later.

References: Loan Agreement Paragraph 8, Exhibit D Paragraph 2.D, Exhibit D Paragraph 2.F, Exhibit D Paragraph 2.I, Exhibit D Paragraph 2.O, Exhibit D Paragraph 2.P

14. AMENDMENTS

The Energy Commission's goal is to minimize or eliminate the need for amendments under executed agreements. If an amendment is necessary, Recipients must submit amendment requests in writing to their assigned CPM. Amendments causing the project to exceed the maximum simple payback period for the loan are not permitted. Maximum simple payback period for 1% loans is 13 years; for 3% loans is 11 years.

No Cost Time Extensions: In accordance with the Energy Commission's State Energy Program Guidelines, project extensions are not permitted. All projects must be complete by the end term date specified in the agreement.

Amendments: If loan Recipients complete only a portion of the funded project, the loan amount may be reduced. If energy cost savings result in a project exceeding the maximum simple payback period, the loan amount will be reduced accordingly. Depending upon the circumstances of the project, scope reductions may require a formal amendment to the agreement. Recipients should contact their assigned CPM to discuss as soon as a scope reduction is expected to occur. Formal amendments can take up to **60 days or longer** to process.

Amendments to add energy efficiency or renewable energy measures not already included under the agreement are not allowed.

Informal Amendments: Certain changes can be effectuated through an informal amendment to the agreement and are documented through a Letter of Agreement between the Energy Commission and Recipient.

References: Loan Agreement Paragraph 13.F