



FutureGen Industrial Alliance, Inc
73 Central Park Plaza E
Jacksonville, IL 62650
www.FutureGenAlliance.org
Letter No. LT-200 2012.02.13

February 13, 2012

Request for Quotation 1.2-20
Title: FutureGen Stakeholder Involvement Services

(Name)
(Address Line 1)
(Address Line 2)

Dear (Name)

The FutureGen Alliance is issuing this formal Request for Quotation based on the Statement of Work located at Attachment No. 1 and the requirement described below.

Consulting Agreement : A Time and Materials Consulting Services Agreement is anticipated.

Period of Performance: The anticipated period of performance is from Mid-March 2012 through June 2012.

Technical/Management Approach: As part of your proposal, please provide a description of your anticipated technical and management approach for carrying out the requirements of the Statement of Work in Attachment No. 1.

Price Submittal Requirements: The detailed information requested in Attachment No. 2, Cost Proposal Instructions, shall be submit as part of your proposal. Please note that your cost proposal shall be subject to the applicable Federal Acquisition Regulations related to cost or pricing data.

Evaluation Criteria. This RFQ is issued as a competitive procurement. The agreement resulting from this RFQ will be awarded to the responsible offeror(s) whose offer conforms to this solicitation and is most advantageous to FutureGen.

The following evaluation factors and sub-factors and respective weightings shall be used to determine the "best value" to FutureGen.

- (a) Technical Evaluation (60%)
 - (i) Technical Approach / Ability to Provide Requested Services

- (b) Business Evaluation (40%)
 - (i) Cost/Pricing
 - (ii) Acceptance of Terms and Conditions
 - (iii) Completion of Certifications

Terms and conditions: FutureGen's Sample Consulting Agreement is detailed in Attached No. 3 for review. Any exceptions or deviations taken to the terms and conditions should be noted in the proposal. Applicable prime contract flow-down provisions will be provided and will be incorporated as part of the agreement.

In addition to the above, any agreement that is the result of this solicitation will be governed by The Davis Bacon act Wage Determination IL 100015 dated 5/13/11. Per Davis Bacon Act, prevailing wages apply to this order. Prevailing wages can be found at www.doe.gov. The following Federal Acquisition Regulation clauses are hereby incorporated into this agreement in their entirety.

- FAR 52.222-6 Davis Bacon Act (Jul 2005)
- FAR 52.222-7 Withholding of Funds (Feb 1988)
- FAR 52.222-8 Payrolls and Basic Records (Feb 1988)
- FAR 52.222-9 Apprentices and Trainees (Jul 2005)
- FAR 52.222-10 Compliance with Copeland Act Requirements (Feb 1988)
- FAR 52.222-11 Subcontracts (Labor Standards) (Jul 2005)
- FAR 52.222-12 Contract Termination Debarment (Feb 1988)
- FAR 52.222-13 Compliance with Davis-Bacon and Related act Regulations (Feb 1988)
- FAR 52.222-14 Disputes Concerning Labor Standards (Feb 1988)
- FAR 52.222-13 Certification of Eligibility (Feb 1988)

Per the required above conditions, you will submit a fully executed SF 1413, Statement and Acknowledgement, upon award of this Agreement. Flow Down Requirements from the Cooperative Agreement are detailed in Attachment No. 4 for your review.

Per FAR 52.22-8, Payrolls and Basic Records (Feb 1988), on a weekly basis and for work performed under this agreement, you will submit a copy of all payrolls to FutureGen (David Brown). This information may be submitted in any format desired or use the Optional Form WH-347, purchased from the federal government.

If you feel that the labor categories you are proposing are exempt from the requirements of the Davis Bacon Act then you are required to submit this objection to the requirement and provide a reason for the objection.

Validity Date: Your proposal must remain valid for 30 days from the date of submission of the proposal and must be so stated in your proposal.

Proposal Submission: Your proposal and supporting information must be submitted in sufficient time to be received by FutureGen no later than 5:00 PM CDT, Thursday, March 1, 2012.

Gratuities: By acknowledgement of response to this RFQ, you hereby certify that no gratuities were offered by you or solicited by any FutureGen employee either directly or indirectly. Any situation where a gratuity is solicited should be reported immediately to FutureGen's Director of Finance.

Award: Any effort expended and any costs or expenses incurred by you as a result of the RFQ shall be your sole responsibility. There is no obligation for FutureGen to cover any costs incurred hereby, or to make any subcontract as a result of this RFQ.

Technical and/or Business Inquiries: Any technical and or/business inquiries relative to this RFQ should be directed to FutureGen through the attention of the Contracting Officer as follows. Please note that the Contracting Officer is the only individual authorized to legally commit FutureGen to the expenditure of funds related to this RFQ.

FutureGen Industrial Alliance Inc
Attn: David Brown
73 Central Park Plaza E
Jacksonville, IL 62650
(217) 243-8215 office
e-mail: dbrown@futgen.org

Your consideration regarding a response to this solicitation is appreciated.

Sincerely,



J. David Brown, P.E.

Attachments:

- Attachment 1 - Statement of Work
- Attachment 2 - Cost Proposal Instructions/Requirements
- Attachment 3 - Sample Consulting Agreement
- Attachment 4 - Flow Down Requirements
- SF-1413 Form

ATTACHMENT NO 1

STATEMENT OF WORK

for

Stakeholder Involvement Services

The FutureGen Alliance is interested in acquiring the services to conduct stakeholder involvement activities associated with the Alliance's activities in Morgan County surrounding the FutureGen 2.0 Project. FutureGen 2.0 consists of repowering of a unit at the Meredosia power plant, constructing and operating a CO₂ pipeline from the Meredosia power plant to a CO₂ storage site that will be built east of Jacksonville, IL, and injecting and permanently storing CO₂ in the underground site.

1.0 Background

In cooperation with the US Department of Energy (DOE), the Alliance will upgrade its power plant in Meredosia, Illinois with oxy-combustion technology to capture approximately 1.3 million metric tons of carbon dioxide (CO₂) each year. The Alliance will safely transport and store CO₂ underground at a nearby storage site, which will also include visitor, research and training facilities. Lessons learned from the FutureGen project will help make near-zero emissions coal power plants economically viable in the United States and around the world.

The FutureGen Alliance has selected Morgan County, Illinois as the preferred location for the CO₂ storage site as well as the location to host the visitor center and research and training facilities. The CO₂ will be transported to the site via a pipeline that will connect to deep injection wells drilled into the Mt. Simon Sandstone. At the CO₂ storage site, the Mt. Simon Sandstone has a thickness of approximately 800 ft and occurs between depths of 4,000 to 5,000 feet below ground surface [ft bgs].

2.0 Objectives

The Alliance's goal is to meet with stakeholders potentially affected by (or interested in) the FutureGen project and associated activities early on, to hear their questions and concerns and to provide responses to these issues. A knowledgeable and experienced person from the region is needed to conduct these outreach activities. Activities include installing a pipeline from the re-powered plant in Meredosia to the sequestration site east of Jacksonville, IL. Several permits and approvals are required for the various FutureGen 2.0 activities and the requirements for obtaining many of them call for public notices, comments, meetings, and/or hearings.

3.0 Consulting Services Agreement

This Agreement will be a time and material services type contract and will require some travel. Initial planning work will begin in March and the contract term will extend through June 30, 2012. This contract term may be extended upon mutual agreement.

4.0 Description of Work

Specific responsibilities/activities will include the following:

1. Supporting and contributing to stakeholder involvement planning
2. Hosting informational meetings with service organizations (e.g., Rotary, Kiwanis Club, etc.) (Ongoing throughout the performance period)

3. Supporting the Citizens Board and logistics associated with meetings
4. Supporting planning concerning visitor/research/training facility activities
5. Conducting one-on-one meetings with landowners along the pipeline corridor to hear issues and concerns and to provide project description information
6. Conducting informational meetings with pipeline corridor landowners
7. Facilitating internships with 3 local colleges, working as the on-the-ground contact for students/professors and the Alliance to ensure that questions are being answered and to help ensure the internships are successful.
8. Helping to set up meetings, attend meetings, and take notes with environmental-non-governmental organizations and other stakeholders to hear issues and concerns
9. Assisting in identifying individuals and agencies that must receive notifications of various permitting actions and identify the local publications for such legal notices
10. Taking the lead on publishing notifications in local media
11. Maintaining records of all formal notifications of the public and agencies

ATTACHMENT NO 2

Cost Proposal Instructions/Requirements

Costing inputs should be provided in sufficient detail for FutureGen to complete a cost/price analysis to determine fair and reasonableness as per the prime contract requirements and applicable U.S. Government ("Government") regulations and statutes. Please note that your cost proposal shall be subject to the applicable FAR principles relating to cost and/or pricing data.

Additional instructions for the following basic elements of costs are applicable:

1. **Direct Labor:** Provide the following:
 - Hourly rates:
T&M - (Time and Material) fully burdened rates including fee.
List of the individuals or labor categories being proposed.
 - Total number of labor dollars proposed per category
 - Qualifications
Provide a description of the qualifications or a resume that includes the individual's degree(s) and years of related experience for all individuals or labor categories proposed
2. **Materials, Equipment, Other Direct Cost:** Provide a price summary broken down by individual material quantities, description, etc. For travel, specifically break out costs for each trip separately showing anticipated date(s) For travel, specifically break out costs for each trip separately showing anticipated date(s), departure city, destination, number of people, duration, and number of trips.
3. **Additional information:**
 - a. Proposals submitted may be subject to technical and fact finding type audit.

ATTACHMENT NO 3
SAMPLE CONSULTING AGREEMENT

This agreement is made by and between The FutureGen Industrial Alliance, Inc., (the "Alliance"), the address of which is 1101 Pennsylvania Avenue, Northwest, Washington D.C. 20004 and _____ (the "Consultant").

1. **Services.** The consultant will provide consulting services including, but not limited to: Community Relations Support and Land/Right-of-Way Acquisition Support as outline in the attached scope of work.
2. **Term of Agreement.** The term of this agreement will begin on _____ and terminate on June 30, 2012. The agreement may be extended for up to one-year by mutual agreement. The agreement may be terminate by either party, at any time, with 5 business days of notice.
3. **Time Devoted by Consultant.** The particular amount of time for the work of Consultant may vary from day to day or week to week, depending on the scope of the work requested by the Alliance and as is mutually agreed between the parties. A daily log of activity including time devoted to specific activities must be maintained and be available for review by the Alliance.
4. **Place Where Services Will Be Rendered.** The Consultant will perform services in accordance with this agreement at a location of Consultant's discretion. In addition, the Consultant will perform services on the telephone, by email and in such other places as is necessary to perform the services in accordance with this agreement.
5. **Payment to Consultant.** In consideration of the services performed under this agreement, the Alliance will pay the Consultant at the rate of \$_____ per hour. The Consultant will submit an itemized invoice setting forth the time spent, a description of the services rendered and administrative costs. The Alliance will pay the Consultant the amount due, upon receipt of an appropriate invoice, and within thirty (30) days after receipt of the invoice. Such invoice shall include costs for the following Expenses.
6. **Expenses.** The Alliance will reimburse the Consultant for travel, meals, and other expenses, directly attributable to the relationship between the parties, at actual cost and consistent with Federal Government Travel Cost Regulations. Consultant shall include with any invoice copies of the receipts or statements for such incurred costs.
7. **Independent Contractor.** Both the Alliance and the Consultant agree that the Consultant is an independent contractor in the performance of his duties under and related to this agreement. Accordingly, the Consultant shall be responsible for payment of all taxes including Federal, State and local taxes arising out of the Consultant's activities in accordance with this agreement. Consultant shall, at all times, have control over the means and methods of his performance of the services.
8. **Confidential Information.** Consultant acknowledges that the Alliance has a duty not to disclose confidential information of the Project and of the Alliance's Membership. Consultant agrees not to disclose any confidential Project or Membership information received by him related to the performance of services under this agreement in accordance with the Alliance's policies therefor. This provision survives any termination or expiration of this agreement.

9. **Conflict of Interest Rules.** Consultant is free at all times to engage in other work. Consultant agrees not to engage in any activity that results in a conflict of interest for him between other work and the services he is providing for the Alliance or its Membership or which is in direct competition with specific, current matters of the Alliance without the consent of the Alliance. If an issue arises with respect to a conflict of interest or a competing activity, the Alliance and the Consultant will seek to resolve it in a mutually satisfactory manner. If the parties are unable to resolve the issue, either party may terminate this agreement at that time.

10. **Flow Down Provisions.** This agreement is a lower tier procurement of services which are performed pursuant to the Alliance's prime contract (Cooperative Agreement) for the FutureGen 2.0 Project. Currently, no flow down provisions of that agreement appear to be applicable to Consultant as a lower tier procurement. If at any time the Cooperative Agreement is modified and it is determined that new flow down provisions are required to be included in this agreement, Consultant and the Alliance agree to amend this agreement with any flow down provisions which may be required by any new modification to the Cooperative Agreement.

11. **Miscellaneous.** This agreement represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all verbal and written communications made between the parties which are not included herein. This terms of this agreement may be changed only by an amendment or letter signed by both parties which modifies this original agreement. The parties hereto have executed this agreement as of the respective dates entered below and the agreement is effective as of the date contained in Paragraph 2 of this agreement.

AGREED BY:

FUTUREGEN INDUSTRIAL
ALLIANCE INC.

CONSULTANT

By: _____
Kenneth K. Humphreys

Title: Chief Executive Officer

Date: _____

Date: _____

ATTACHMENT NO. 4

FLOW DOWN REQUIREMENTS FROM THE COOPERATIVE AGREEMENT BETWEEN THE ALLIANCE AND THE U.S. DEPARTMENT OF ENERGY: COOPERATIVE AGREEMENT NUMBER DE-FE001882

[THIS ATTACHMENT APPLIES TO SUBCONTRACTOR AND WHEN A LOWER TIER PROCUREMENT IS ISSUED TO A VENDOR/CONTRACTOR/SUBCONTRACTOR ("VENDOR"). A VENDOR INCLUDES THOSE ISSUED PURCHASE ORDERS, CONTRACTS OR SUBCONTRACTS ("PROCUREMENT DOCUMENTS") FOR GOODS, MATERIALS AND SERVICES TO CARRY OUT THE PROGRAM UNDER THE COOPERATIVE AGREEMENT. THE COOPERATIVE AGREEMENT'S PROVISIONS REQUIRE THE INCLUSION IN LOWER TIER PROCUREMENTS OF DESIGNATED FLOW DOWN PROVISIONS INCLUDED BELOW WHEN SUCH PROVISION APPLIES TO THE PROCUREMENT MADE UNDER A PROCUREMENT DOCUMENT. CERTAIN THESE OF THE FLOW DOWN PROVISIONS ARE APPLICABLE AS REQUIRED BY THE AMERICAN REINVESTMENT AND RECOVERY ACT OF 2009 ("RECOVERY ACT") WHICH SPECIFICALLY STATES THE REQUIREMENTS FOR THE INCLUSION OF THE FULL TEXT FOR SELECTED PROVISIONS TO BE INCLUDED IN PROCUREMENT DOCUMENTS ISSUED UNDER THE COOPERATIVE AGREEMENT.]

1. **GENERAL:** For purposes of the work performed under this Subcontract, 10 Code of Federal Regulations, 600, et seq., contains the applicable statutory or regulatory provisions referred to above and which are set forth below. The pertinent Subpart of 10 Code of Federal Regulations 600, et seq., is applicable to a Vendor, depending on the scope of the work involved in the Procurement, the total costs paid for the work, the level or tier of contracting, the type of entity in which the Vendor does business and other factors. Incorporated by reference into the Subcontract are the following federal regulations and the subparts therefor, including their applicable appendices. Subcontractor shall include the appropriate Subpart in any Procurement Document with a requirement in such document that the Vendor agree to comply with the provisions contained therein.
2. **10 Code of Federal Regulations, 600:** Such requirements may be found at DOE Assistance Regulations at <http://ecfr.gpoaccess.gov> and the appropriate Subpart shall be included in each Vendor's Procurement Document, as applicable to that Vendor.

General Requirements

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations;

Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments; or

Subpart D—Administrative Requirements for Grants and Cooperative Agreements with For-Profit Organizations.

3. **REPORTING REQUIREMENTS.** The Alliance is required to agree to the following clause in its Cooperative Agreement:

The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE Form 4600.2, attached to this award [the Cooperative Agreement]. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award. A willful failure to perform, a history of failure to perform, or unsatisfactory performance may also result in a debarment action to preclude future awards by Federal agencies.

Vendor agrees that, to the extent possible in the performance of its work, it will assist the Alliance in the compliance with any such obligations it has from the Reporting Checklist when such may require the cooperation of Vendor. This shall be in addition to any specific reporting requirements which may be included in its Procurement Document between it and Subcontractor and in the following provision.

Included in these reporting requirements is the agreement by Vendor to provide to the Alliance a quarterly report of information required by the American Reinvestment and Recovery Act of 2009 ("Recovery Act") regarding jobs created from the work under the Cooperative Agreement which must be submitted to DOE each quarter. Vendor acknowledges that it will submit a report each quarter to the Alliance on information required by the Recovery Act, the form to be supplied to Vendor by the Alliance. In addition to its cooperation with any other reporting requirements imposed by this Paragraph, Vendor agrees that the Recovery Act report will be submitted to the appropriate person designated by the Alliance within five (5) calendar days of the end of each quarter.

4. LOBBYING RESTRICTIONS. Vendor agrees to comply with the following requirement from the Alliance’s Cooperative Agreement which states:

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

The following Section is included in the Alliance’s Cooperative Agreement and is applicable to lower tier procurements of goods, materials and services. This section uses different terminology for the names of the contracting parties because it is excerpted from the Recovery Act. For purposes of the following section, the terms “contractor,” and “grantee” shall mean “Vendor” and the term “subgrantee” shall mean the lower tier contractors of Vendor, as appropriate for the language of the clause.

5. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009), Subparagraph D.

Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized -

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions...

6. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

...(c) Recipients and their first-tier sub-recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

7. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS. It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

8. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

- (a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds....

Vendor agrees to use its best efforts to assist the Alliance with the provision of any information which may be required by the Alliance to complete its obligations in the above (excerpted) section of its Cooperative Agreement.

9. WAGE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT (As Applicable) (DAVIS-BACON ACT REQUIREMENTS)

Notwithstanding any other provision of law and in a manner consistent with other provisions in this [Recovery] Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government Pursuant to this [Recovery] Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, *United States Code*. With respect to the labor standards specified in this Section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 20, *United States Code*.

Also incorporated by reference into the subcontract are the Davis-Bacon Act implementing regulations found in 29 *Code of Federal Regulations*, Parts 1, 3, and 5 including, but not limited to, 29 *CFR* 5.5(a) for [subcontracts] that are in excess of \$2,000 for construction, alteration or repair (including painting or decorating).

10. **DAVIS BACON ACT**. The Alliance's Cooperative Agreement (prime contract) with DOE requires that the provisions of this Paragraph lower tier Procurement with the full text of the provisions stated below. The Cooperative Agreement below requires the inclusion of these same provisions in any lower tier procurements by Vendor. For purposes of the below provisions, the terms "Contractor" and "Contract" shall mean "Subcontractor" and "subcontract", respectively and as appropriate for the language of the clause. Such terms, when flowed down to a lower tier procurement shall mean "Contractor" and its "Contract" or "Subcontractor" and "Subcontract", as the case may be, as awarded by Vendor under its Procurement Document. The texts of such sections are included below. Vendor shall include the same provisions in any lower tier contracts issued under its subcontract for the work.

11. **DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (NOV 2009) (If Applicable)**

(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 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 [meaning "Subcontractor" in this case] or Subrecipient [meaning "Subcontractor" in this case] 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 [meaning "subcontractors," as appropriate in this case 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 [meaning "Subcontractor" in this case], or Subrecipient [meaning "Subcontractor" in this case], may, after written notice to the Contractor [meaning "subcontractors" as appropriate in this case], 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) [or to "Subcontractor," 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 Federal 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 Federal 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.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. The Cooperative Agreement (prime contract) with DOE requires that the provisions of its Paragraph be set forth in any Procurement including the full text thereof and requires the inclusion of these same provisions in any lower tier procurements by Vendor. For purposes of paragraph (b) below, the terms "Contractor" and "Contract" shall mean "Vendor" and "Procurement Document", respectively and as appropriate for the language of the clause. Such terms, when flowed down to a lower tier procurement shall mean "Vendor" and its "Procurement Document", and its lower tier procurements, as the case may be, awarded by Vendor under its Procurement Document. The texts of such sections are included below. Vendor shall include the same provisions in any lower tier procurements issued under its Procurement Document for the work.

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 [meaning "Vendor" in this case] or Subrecipient [meaning "Vendor" in this case] 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.

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.

12. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS)--SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) Definitions. As used in this award term and condition--
Designated country —

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong

Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; or (4) An Agreement between Canada and the United States of America on Government Procurement country (Canada).

Designated country iron, steel, and/or manufactured goods —

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good —

(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.*

(1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111—5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the Project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the Project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of \$7,804,000 or more.

- (2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.
- (3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows: none.

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- (4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that--
- (i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the Project is unreasonable when the cumulative cost of such material will increase the overall cost of the Project by more than 25 percent;
 - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
- (c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act. (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—
- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the Project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
 - (iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a Project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a Project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description Unit of measure Quantity Cost (dollars)*

Item 1:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

Item 2:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

13. SUCCESSOR PROVISION – ASSIGNABILITY OF PROPERTY RIGHTS, SUBCONTRACTS AND LEASE AGREEMENTS

a. In the event the Recipient [the Alliance] elects not to submit a Decision Point Application for a subsequent Phase or the Cooperative Agreement is terminated by DOE and/or the Recipient pursuant to the termination provisions of the Cooperative Agreement, DOE, at its sole discretion, may complete this FutureGen 2.0 project either in its own right or through a third party identified by DOE. Upon DOE's determination that it will exercise its discretion to complete the project itself, or upon its identification of the third party entity which will complete the project for DOE, DOE will notify the Recipient of its election, as provided for below, and the Recipient will notify all parties to agreements [all Subcontractors] with the Recipient for the project as described in subparagraph b. below ("subcontractors") of DOE's election to proceed to exercise any rights it has received pursuant to this Successor Provision. DOE will then work directly with each subcontractor of any tier, as described in subparagraph b. below, to reach mutual agreement between it and the subcontractor to continue the subcontractor's work for the project with the identified entity, whether such shall be DOE or the third party.

b. The Recipient shall include in each agreement necessary to complete design, construction, and operation of the FutureGen 2.0 pipeline and storage facility (including but not limited to each subcontract, vendor agreement, purchase order, lease, access agreement, contract for sale, off-take agreement, power purchase agreement, operating agreement, and license) a provision stating that:

Upon DOE's election to complete the project, either by itself or by a third party, the subcontractor agrees to use good faith efforts to negotiate a mutually acceptable transfer of the agreement under which the subcontractor currently performs work for the Recipient to DOE or that third party identified by DOE on substantially similar terms and conditions as are contained in its agreement with the Recipient. The subcontractor further agrees to use good faith efforts to complete the transfer within 30 days after notice from the Recipient or DOE. DOE and the subcontractor shall negotiate any price increase and schedule change to the subcontract which may result from the transfer. If DOE assumes direct responsibility for completion of the project, the contractor agrees to negotiate in good faith with the DOE to include to any additional federal requirements that may apply to the resulting agreement subject to an adjustment in price for any additional burden that might result from the requirements.

DOE may exercise its right to assume the agreement, or have the agreement assumed by a third party, not later than 120 days after the effective date of the Recipient's withdrawal from the Cooperative Agreement or termination of the Cooperative Agreement, whichever is applicable. DOE agrees that, in its exercise of its right to assume the agreement, or to have the agreement assumed by a third party, it shall not require the subcontractor to contract with a competitor entity, as mutually determined by DOE and the subcontractor or to agree to terms and conditions which would in any way jeopardize the integrity or value of its existing, private and background data, information, technology and intellectual property.

c. DOE shall provide the Recipient written notice of its intent to complete the project not later than 90 days after the effective date of the Recipient's withdrawal from the Cooperative Agreement or termination of the Cooperative Agreement, whichever is applicable.

d. Upon receipt of DOE's notice as set forth in paragraph (c), the Recipient shall:

Notify all subcontractors of DOE's intent to proceed with completion of the project and to proceed with transfer or assignment of the subcontracts.

Take all necessary steps on the part of the Recipient to effect a transfer of the subcontracts, as specified by DOE, to DOE or to the third party identified by DOE.

Use its good faith efforts and cooperation to effect an orderly and efficient transfer of the project subcontracts.

Transfer title of the FutureGen 2.0 pipeline and storage facility to DOE, including transfers or assignments of title to all real property, personal property, and documentation necessary to complete design, construction, and operation of the facility. The Recipient shall not be entitled to compensation from DOE for any interest the Recipient may hold in the transferred property.

d. DOE shall reimburse the Recipient for all costs incurred by it to comply with the provisions of this Article.