



Chicago Metropolitan Agency for Planning

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January 28, 2011

REQUEST FOR PROPOSALS (RFP) NO. 060

SELECTION OF LOAN AND PROGRAM ADMINISTRATOR(S) FOR COMMERCIAL AND INDUSTRIAL (C&I) PROPERTIES RETROFIT FUND PROGRAM OF THE CHICAGO REGION RETROFIT RAMP-UP (CR3) PROGRAM

Chicago Metropolitan Agency for Planning (CMAP) is requesting proposals from interested firms including financial institutions, and partner organizations to manage the Commercial and Industrial (C&I) Retrofit Fund Program for the *Chicago Region Retrofit Ramp-Up (CR3)* program as described in the enclosed Request for Proposals (RFP). If your organization is qualified and experienced in performing the described services, CMAP would appreciate receiving your application as indicated in this Request for Proposal. The deadline for receipt of submissions in response to the Request for Proposal is **3:00 p.m., February 18, 2011**.

A non-mandatory information session will be held on February 7, 2011 at 10:30 a.m. CST in CMAP's offices, 233 South Wacker Drive (Willis Tower), Suite 800. Applicants may attend in person or by webinar/conference call. To attend in person, call CMAP at 312-454-0400 to be added to the Willis Tower Visitor list. Driver's license or state ID required for entry into building tower. To register for the webinar/conference call, send an email to mmcgrath@cmap.illinois.gov requesting RFP 060 webinar/conference call information. An email with the webinar/conference call information will be sent to all who have registered by noon on Thursday, February 3, 2011.

Participation in the information session is non-mandatory, but is offered as a way to best understand the scope of work we are trying to accomplish here. CMAP strongly encourages those interested in participating in this program to attend. The presentation, questions and responses noted during the information discussion will be posted on our website with the RFP.

Thank you, and if you have any questions, please call me at (312) 386-8788.

Sincerely,

Margaret McGrath
Grant/Contract Officer

Enclosure

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The Chicago Metropolitan Agency for Planning (CMAP) invites appropriate firms including financial institutions (FIs), including banks, saving and loans, credit unions, community development financial institutions (CDFI), mortgage companies, and similar entities) and partner administrative organizations to submit proposals to act as loan and program administrator(s) of the Commercial and Industrial Retrofit Fund Program of the Chicago Region Retrofit Ramp-Up (CR3) program as described in the enclosed Request for Proposals (RFP). Please read each section carefully for information regarding the proposal and submittal instructions.

SECTION 1: Background and General Information

Project Background

In May 2010, the U.S. Department of Energy (DOE) issued 25 awards nationally through the competitive Energy Efficiency and Conservation Block Grant (EECBG) [Retrofit Ramp-Up](#) stimulus initiative (now known as the BetterBuildings Initiative). A regional collaboration led by the Chicago Metropolitan Agency for Planning (CMAP) – in partnership with the City of Chicago Department of Environment, with support from the City of Rockford and suburban and regional stakeholders – was awarded \$25 million to transform the market for carrying out energy-efficient retrofits to commercial and residential buildings in northeastern Illinois.

The objective of the Chicago Region Retrofit Ramp-up (CR3) program is to build a comprehensive energy retrofit program which includes strategies to build a sustainable business model to aggressively retrofit commercial, industrial, and residential buildings across northeastern Illinois. CR3 accelerates the existing Chicago Climate Action Plan implementation strategy and the Chicago Energy Efficiency Building Retrofit Strategy, across the metropolitan Chicago region including Rockford, leveraging significant existing resources and program components from partners, financial institutions and utility companies. The implementation of the CR3 is further integrated into the region's comprehensive plan, *GO TO 2040*. Over the three-year grant period, the project is expected to retrofit as many as 8,000 units, leverage more than \$500 million in local investments, and create more than 2,000 jobs.

For a more complete description of each program component and the activities include, please see a detailed program summary here: <http://www.cmap.illinois.gov/energy>.

The overall CR3 vision is to facilitate the transition of a fragmented retrofit market made up of a loose set of programs to a fully developed, efficient market that can operate with efficiencies of both scale and scope. When this happens, homeowners and business owners will have the information they need to make rational decisions about whether, how, and how much they desire to improve their energy performance. Financial products will be readily available to facilitate the installation of selected measures, and suppliers can respond to consumer demand for retrofits with consistent, efficient, and affordable solutions.

About the Project Partners

The Chicago Metropolitan Agency for Planning (CMAP) is the official regional planning organization for the northeastern Illinois counties of Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will. CMAP developed and now leads the implementation of *GO TO 2040*, metropolitan Chicago's first comprehensive regional plan in more than 100 years. To address anticipated population growth of more than 2 million new residents, *GO TO 2040* establishes coordinated strategies that help the region's 284 communities address transportation, housing, economic development, open space, the environment, and other quality-of-life issues. See www.cmap.illinois.gov for more information.

The City of Chicago Department of Environment develops environmental policies, initiatives and programs, enforces the City's environmental code and regulations and works with other City departments, sister, state and federal agencies, businesses and not-for-profit organizations to protect and conserve our natural resources, prevent pollution, foster energy efficiency and engage Chicagoans in adopting environmentally-friendly behaviors. Mayor Richard M. Daley released the Chicago Climate Action Plan (CCAP), which is comprised of strategies and actions to meet Chicago's climate goals of reducing carbon dioxide equivalent emissions by 25% by 2020, and 80% by 2050. See <http://www.cityofchicago.org/city/en/depts/dae.html> and <http://chicagoclimatereaction.org> for more information.

CR3 Steering Committee

The CR3 Steering Committee's mission is to align missions and leverage resources, both technical and financial, to ensure that CR3 is fully implemented and obtains maximum impact. The Steering Committee plays a lead role in program development and strategic planning, proposal review & selection, reviewing progress and performance monitoring and making recommendations for corrective action. Membership currently includes leaders from [ComEd](#), [Peoples/North Shore Gas](#), [Nicor](#), [Illinois Department of Commerce and Economic Opportunity \(DCEO\)](#), [Illinois Science and Technology Coalition](#), [CEDA](#), the [Northern Illinois Energy Project](#), [CMAP](#), and the Cities of [Chicago](#) and [Rockford](#).

About the CR3 Program

The CR3 program initiates and manages program development, deployment, ongoing consultation, and evaluation of the necessary elements of a successful regional retrofit strategy. During the initial three year grant period funded by the U.S. Department of Energy, the CR3 program will retrofit at least 8,000 units, leverage more than \$500 million in local investments, and create more than 2,000 jobs.

Through a series of RFP's, CMAP is contracting with a number of firms to deploy various components of the CR3 program (in addition to this RFP) for the CR3 Project in three areas: (1) Information System (2) Finance Vehicles and (3) Workforce Intermediary.

CMAP has the ultimate responsibility for assuring that the program is in full compliance with federal regulations, however, CMAP has contracted with [CNT Energy](#) to serve as the implementation agency, and will be responsible to CMAP for day-to-day management of sub-recipients, oversight of data collection, program reporting, and ARRA compliance with all program sub-recipients. CNT Energy will serve as lead liaison for the CR3 program, responsible for the day-to-day communications with all CR3 sub-recipients including but not limited to the loan and program administrator within this request for proposal. The firm chosen to lead the activities in this RFP will be accountable to both CNT Energy and CMAP for all reporting and accounting procedures.

The CR3 program strategy includes three primary areas of work:

1. Access to comprehensive information;
2. Functional finance tools; and
3. Access to a trained workforce.

Statement of Purpose:

The CR3 Partners are seeking firm(s) including financial institutions and/or retrofit program administrators to create an innovative financial product and administer the Commercial & Industrial Retrofit Fund Program. CR3's goal is to support new financing mechanisms that promote private market investment in energy efficiency (EE) measures in the commercial and industrial building sectors throughout the seven-county metropolitan Chicago region and the City of Rockford. In particular, CR3 is interested in investing in financial products that are sustainable beyond the initial three year grant period funding by the Department of Energy. CR3 expects that this financial solution will provide extensive leverage of other sources of private capital (at least 10:1), in addition to the CR3 \$10 million investment.

EECBG program terms and conditions limit the amount of funds CMAP may commit to loan loss reserves (LLR) and revolving loan funds (RLF). Up to \$1 million may not be available for LLR and a maximum of

\$3.75 million may be available for RLF. Respondents are encouraged to propose innovative solutions that provide the best solutions for the market. CMAP may, however, need to negotiate with selected firms to best achieve CR3 goals and meet the EECBG requirements.

Commercial & Industrial buildings, for the purposes of this program, are privately-owned structures not used as residences. C&I buildings can include but are not limited to restaurants, hospitals (for or not-for-profit), shopping centers, offices, storage facilities, or manufacturing centers. An energy efficiency retrofit is the installation of measures in an existing building designed to achieve at least a 15 percent estimated reduction in energy usage.

The Commercial and Industrial (C&I) Retrofit Fund Program is one of six new lending products that will be created through the CR3 program. CMAP has up to \$10 million available to allocate under this Request for Proposals (RFP). The Fund aims to stimulate the retrofit market in commercial and industrial buildings by making new financial products available in the marketplace that are attractive and affordable to building owners. This Program intends to assist financial institutions in lending to C&I buildings owners by providing a loan loss reserve, or other innovative credit enhancement methods that, when paired with existing or new lending programs, will increase participation and market penetration of C&I retrofit activity. CR3 believes that it is important to partner with financial institutions in order to leverage their expertise in the commercial real estate market, and/or the retrofit market, to build an effective and sustainable program for the C&I sector.

The goals of the program include:

1. Increasing energy efficiency retrofit participation in the commercial and industrial sector
2. Supporting the investment of private capital in lending markets for energy efficiency projects
3. Providing increased access to capital for property owners for energy efficiency upgrades and retrofits
4. Proving the cost savings benefits and market viability of retrofit financing in the commercial and industrial building sectors
5. Creating a sustainable market that will continue after the conclusion of the CR3 program

The Commercial & Industrial Retrofit Fund Program is intended to be used primarily as leverage to attract private capital or facilitate the issuance of loans utilizing other capital sources. It is NOT intended to be used as a grant to cover the marginal costs of adding retrofits to other projects. CMAP requires a minimum of 10:1 leverage across the fund, or a total of at least \$100 million in retrofit expenditures for its \$10 million investment. Additionally, the offering of funds is expected to have the following impact on loan guidelines:

- Extend tenors. Loan tenors are expected to be extended. For example a loan tenor of 5 years could be extended to 7 to 10 years, allowing for the energy savings to cover the debt service.
- Potentially allow for the recognition of energy savings on the borrower's ability to make loan payments.
- Reduction in interest rates.

A common method of meeting these goals is the establishment of a loan loss reserve fund (LLR). In this model, the CR3 funds would reimburse the FI for a portion of actual losses experienced by it for qualified energy efficiency retrofit loans that become delinquent or in default. The CR3 funds effectively transfer a significant portion of the default risk from the lender, thus allowing for increased activity in this market. The reserve fund cannot be used to directly fund retrofit activity or serve as a loan guarantee and in no situation will CMAP extend any guarantee or commit additional funds beyond those that capitalized the loan loss reserve fund. Instead, the fund is intended to reduce risk for lenders and allow them to share the burden of risk of potential defaults.

Other strategies could involve leveraging existing secured capital or utilizing a revolving loan model to fill gaps in other financing. These or other mechanisms can be proposed or combined in response to this RFP. Note, however, that this RFP is intended to provide for the cost of the credit enhancements. The cost of administering the program, including marketing, reporting, monitoring, loan origination, and loan servicing, should be rolled into the cost of the loan or its origination as discussed in Section 2 below.

A successful applicant will be responsible for lending and administration (oversight and execution) of retrofit activities as part of this request for proposal. Applicants should provide a detailed execution plan with roles and responsibilities clearly defined for all of the necessary components to support a retrofit, including recruitment of property owners, assistance in arranging for energy audits, financing, assistance with contractor selection and oversight, and performance monitoring. CR3 recognizes that there is an array of possible partnerships that are plausible. For example, bidders can suggest that C&I building owners may choose to provide the technical and/or construction management solutions directly and that the financial institution would simply provide the financing; or a firm experienced in managing retrofit programs could partner with a financial institution to administer the program and service the loans; or a financial institution may choose to provide both the financial and administrative services.

Bidders are permitted to propose a partnership framework that they feel best meets the scope of services detailed below, but all proposals must fulfill two roles (described in greater detail in the scope of services): program administrator and financial institution (FI). If proposing as partnerships or teams, proposer must designate one lead applicant, and must clearly define the roles and responsibilities for the lead and any and all subcontractor(s). The lead applicant is solely responsible for any and all sub-contractual business arrangements. The subcontractors will have no legal or contractual recourse to the Chicago Metropolitan Agency for Planning. Proposals that do not incorporate 100 percent of all components listed in this RFP will not be considered. Interested firms must respond to all of the requirements outlined below.

The selected program participant(s) will be responsible for the creation and daily management of Commercial and Industrial Retrofit Fund Program administration, assuring that all objectives are met, and that program progress is continually communicated to CNT Energy and CMAP. As this program will be funded through an ARRA grant from the US Department of Energy, the selected firm may also be called on to meet with representatives from the Federal government performing monitoring functions.

General Information

As a result of responses to this RFP, CMAP plans to review submissions and, if necessary, conduct interviews with selected applicants it determines can best meet the requirements outlined below. Negotiations will be held as necessary to select participants that CMAP believes can best satisfy its requirements. Subject to "Reservation of Rights" below, it is anticipated the term of the contract(s) will be for a period ending on May 18, 2013.

Finalists will be selected for negotiations, at which time the final structure of the program financing/budget will be solidified. The terms of the loans and credit enhancement budgets will be laid out in the application and finalized in an Agreement between CMAP and the successful applicant. CMAP reserves the right to issue multiple awards under this RFP.

SECTION 2: Scope of Project and Procurement Details

The Scope of Services are organized into the two primary roles discussed above, i.e., program administration and lending, and generally represent the breadth of services that are envisioned for the CR3 C&I Retrofit Fund Program. These roles may be fulfilled by a financial institution alone, or a partnership between an administrator and one or more financial institutions. CMAP encourages firms and institutions to suggest innovative approaches and partnerships that demonstrate a sound approach to lending for retrofit activity in the C&I sector and that best cover this scope.

Administrative responsibilities include:

- *Program Design & Implementation.* In consultation with the CR3 team, leading the design and implementation of the C&I program.
- *Recruiting, Vetting, and Enrollment of Building Owners into the Loan Program.* Aggressively marketing the loan fund and conduct outreach to C&I building owners, as described above. Additionally, screening owners for credit worthiness, verifying that applicants, activities and projects selected for loans comply with ARRA & EECBG requirements, and resolving building owner/program participant issues.
- *Measurement and Verification.* Ensuring building owners provide permission to the CR3 program to access utility bill data necessary to demonstrate effectiveness of the EE retrofit.
- *Compliance with the Requirements of all Applicable Federal, State and Local Laws, Codes, and Regulations.* Ensuring that all applicable Federal, State and local laws, codes, regulations, DOE policy and Guidance, and instructions within this request for proposals, are complied with unless relief has been granted by the DOE and CMAP; Ensuring flow down of the requirements of applicable Federal, State, and local laws, regulations, DOE policy and guidance and instructions in the RFP to sub-recipients at any tier to the extent necessary to ensure compliance with the requirements and verify that contractors are meeting these requirements. Applicable provisions of these requirements will depend upon the nature of the financial product utilized by the winner and the extent of the retrofits undertaken, as discussed in the Department of Energy document, "Guidance for Energy Efficiency and Conservation Block Grant Grantees on Financing Programs" with an effective date of August 10, 2010 available at http://www1.eere.energy.gov/wip/pdfs/eecbg_financing_guidance2010_08_10.pdf . CMAP and CNT Energy will work with the selected entity(ies) to outline the exact requirements. Awardees of the C&I Retrofit Fund Program must adhere to all program notices issued by the U.S. Department of Energy applicable to the EECBG program including any future amendments.
- *Reporting.* Providing CNT Energy monthly and quarterly progress reports, implementing any corrective courses of action when needed, and ensuring that all required data (currently being determined by the US DOE) is entered into the CR3 reporting software, including but not limited to:
 - Job Creation and retention (including number, type and duration).
 - Energy use and demand savings
 - Renewable energy capacity and generation
 - Carbon Emission reduction
 - Loan Portfolio data collection including but not limited to:
 - Number of loan applications received
 - Number and dollar amount of loans provided
 - Summary of upgrades/construction loan fund will be used for
 - Loan and interest payments received
 - Administrative costs incurred

Lender responsibilities include:

- *Creative Collaboration in Program Design.* Develop creative options to enhance and improve the Program.
- *Energy Efficiency Loans.* A capital commitment to originate loans according to the agreed range of terms and subject to FI's credit approval, as described further below under "EE Loans." Develop forms for use in loan application process, loan disbursement and reporting.
- *Customer credit pre-screening services.* Focus project development efforts with creditworthy customers to achieve high levels of access to loans for customers.
- *Loan collections and administration.* Service the loan by collecting loan payments and develop agreement to repossess energy efficiency equipment in event of Loan default, subject to Loan agreement terms with customers. FIs must follow their normal collection procedures and must outline these in their response to this RFP. Developing a secondary market for these loans is a desired long-term outcome, and if the FI wishes to sell loans or outsource servicing, it should describe procedures for doing so, including and procedures for offering a loss reserve or other credit enhancement in the secondary market, but must ensure that the terms and conditions follow the loan.
- *Reporting.* In conjunction with the program administrator, provide information as needed on the success of Loans, collections activity in default situations, and other matters (subject to customer privacy policies).
- *Demonstrate the benefits of an energy efficiency retrofit in the C&I building sector.* The FI is expected to work with the CR3 partners to disseminate information on this program so it may be used as a model for future efforts or in other locations.
- *Marketing.* Assist with marketing the loan products to targeted entities, such as existing clients. A common challenge to implementing EE measures is lack of financing, so the availability of the Loan can overcome this barrier and motivate participation. Further, the FI should have a goal to structure projects so that the dollar amounts of the estimated energy cost savings offset the amount of the monthly Loan payments. Thus, the Loan offer is integral to Loan marketing and will be integrated with the overall CR3 marketing. In addition, the following Loan marketing strategies and alliances are recommended and could be further explored and developed in a proposal response:
 - ESCOs/Manufacturers' Finance Arms. Partner with entities involved in providing related energy services to the C&I sector.
 - FI's Existing Customers. The selected FI will market the Program to its existing portfolio of C&I customers. The FI will identify customers, make contact, present the Program and bring them to the program administrator for project development services. These customers could be pre-screened for Loan eligibility.
 - Mortgage Refinancing. There is an opportunity to piggyback EE investments with mortgage refinancing and incorporate the EE project investment into the new first mortgage principal, provided the project can be developed within the refinancing time frame.
 - Market Aggregators. The Program and Loan offers can be marketed to entities that reach and manage multiple properties and property owners. These offer the opportunity for one high-level sale to result in an aggregated set of projects.
 - Trade Allies. The FI may partner with a trade ally to provide a coordinated approach to marketing retrofit services, identifying necessary improvements, contracting the work, and providing financing.

- Utilities. The FI may partner with utility providers to identify large customers or high energy use intensity that could most benefit from the program.

EE Loans

The goal of the Program is to offer EE Loans on attractive terms and longer tenors and broaden access to financing for EE retrofits. Only loans to commercial & industrial buildings will be offered under this program. The following list summarizes typical terms of the Loan products. These details will be finalized with the selected partner FI. A preliminary Loan product term sheet (Attachment 1) should be included in the RFP response for each financial product recommended.

- *Eligible borrowers.* Owners, lessees, or managers of C&I buildings located in the seven-county Chicago Metropolitan region and the City of Rockford will be eligible to borrow under the Program. Commercial and industrial buildings, for the purposes of this program, are privately-owned structures not used as residences. C&I buildings can include but are not limited to restaurants, hospitals (for- or not-for-profit), shopping centers, offices, storage facilities, or manufacturing centers. FIs should consider setting specific lending criteria that broaden access to credit for energy efficiency projects, based upon the credit enhancement provided by the CR3 funds.
- *Eligible Projects.* Energy efficiency retrofits appropriate for the structure and its use allowable under the EECBG program. An energy efficiency retrofit includes the installation of measures in an existing building designed to achieve at least a 15 percent estimated reduction in energy. When EE projects are completed as part of a gut rehab, savings are those exceeding measures required by code.

Many types of energy efficiency measures could be financed. Typical improvements and allowable expenditures for funds will include, but are not limited to, equipment, equipment installation, energy-efficient fixtures, and retrofits installed on property owned, leased, or managed by the loan applicant. Eligible energy efficient fixtures and retrofits may include, but will not be limited to, mechanical systems and components including HVAC, refrigeration, and hot water; electrical systems and components including lighting and energy management systems, pumps, fans, motors; and building envelope improvements including windows, doors, reflective roofing materials, and insulation.

A complete definition of “eligible projects” will be developed based on energy savings and other qualitative and economic criteria developed by the program administrator in consultation with CMAP, CNT Energy, equipment suppliers, consulting engineers, and utilities. Technical studies confirming that projects meet these criteria can be shared with partner FIs as part of Loan origination and appraisal.

- *Loan application.* Standard loan application materials will be provided by the FI. The Loan application will include an EE project investment plan and feasibility study specifying the intended measures to be implemented, their costs, estimated energy and cost savings, sources of financing, and contractor plan for implementing the work.
- *Loan terms.* It is anticipated that 5-15 year terms are reasonable, but the FI should propose what it believes would be effective.
- *Interest rate.* Our starting assumption is that interest rates will be market-based for the type of loan product, or below, factoring-in the extra security offered by the credit enhancements provided under this program. Rates should be fixed for each Loan at the time of Loan application approval, or a variable rate should be justified by the FI. The FI should provide a published interest rate index as a benchmark for Loan pricing.

- *Payment schedule.* Monthly payments in arrears are anticipated, with Loans amortized “mortgage style,” that is, level payments of interest and principal. Alternatives should be justified in the proposal.
- *Loan size: minimum & maximum.* The actual parameters for the minimum and maximum loan size should be stated in the proposal. Milestones for lending will be agreed upon and set forth in the agreement with the selected entity.
- *Loan underwriting guidelines and security.* To be proposed by FI. Borrower contribution, if needed, can be paid by recipient contribution, utility rebates or incentives, or other rebates and incentives. A prudent portion of estimated energy cost-savings can be included in this calculation. The FI can also file a Uniform Commercial Code Form 1 (UCC-1) on the installed equipment.
- *Loan disbursement and flow of funds during project construction.* To be developed with FI. The simplest method is a single loan disbursement to contractor, authorized by borrower, following completion and acceptance of the project. Methods for construction advances for larger projects may be investigated. Multiple projects may be grouped for implementation.
- *Prepayment option.* Option to prepay the outstanding Loans in whole or part without penalty is ideal, but anticipated terms should be described in the proposal.

CMAP and the CR3 Program will provide:

- *Program Coordination.* CMAP and CNT Energy will coordinate project implementation among all partners and parties.
- *Funding.* Up to \$10,000,000 will be used for credit enhancement for energy efficiency loans from the partner FI. The credit enhancement could be in the form of a ‘loan loss reserve,’ according to a formula to be negotiated, and/or other credit enhancements, to support energy efficiency financing.
- *Broad Marketing and Referral Source.* As part of the CR3 program, there will be a regional marketing and communication strategy as well as an information portal for connecting property owners to information about energy efficiency retrofits, tools for assessing energy usage and information on CR3-supported and other financing programs for property owners. The selected entity(ies) will be expected to contribute information about the program to the information portal as well as receive referrals from interested C&I property owners. While we anticipate these services will be a path of entry for many property owners, it does not eliminate the responsibility of the selected entity(ies) to provide marketing services, recruit, and enroll building owners.
- *Reporting Structure and Oversight.* An electronic system will be provided for capturing data on expenditures made and project specific energy usage, projected savings, and financial performance. CMAP will submit data from this electronic system to the US DOE systems as required, but the applicant must agree to submit information to the CR3 electronic reporting system. Training will be provided on use of the system. Additionally, CMAP and CNT Energy will provide oversight of the selected entity(ies) to ensure that they are complying with all applicable provisions of the agreement and federal requirements.
- *Compliance Training and Assistance.* CNT Energy will assist the selected entity in determining how to apply the federal provisions to the program or to individual projects and documenting compliance. These requirements may include but are not limited to ARRA reporting, Davis-Bacon, Buy American, NEPA, and SHPA requirements. The applicability of these requirements varies based upon the structure of the financing arrangement; a discussion of which can be found at http://www1.eere.energy.gov/wip/pdfs/eecbg_financing_guidance2010_08_10.pdf Ultimate responsibility for compliance with the contracted agreements will remain with the selected entity.
- *Energy Efficiency Expertise.* The CR3 and implementation agency partners are well versed in energy efficiency measures, energy auditing, and verification. As necessary, we will consult with

the selected entities on establishing program standards and best practices and will provide project specific expertise as necessary.

- *Work Force Guidelines.* As part of the CR3 program, we will be creating a standard set of guidelines and requirements for certification for energy efficiency auditors and/or contractors as well as construction specifications. As these guidelines are developed, the selected entity will be expected to integrate them into the program.

Use of Grant Funds

General. CR3 is interested in innovative financing mechanisms and proposals for best accomplishing the goals outlined in this RFP and that meet the restrictions of the EECBG monies funding this program. While we anticipate proposals incorporating a loan loss reserve fund and have provided specific guidance for the creation of a loan loss reserve below, other financing mechanisms are welcome. A proposal detailing other mechanisms should provide adequate details on the operation of such a fund as to allow the CR3 partners to judge the effectiveness and cost structure of the approach. A detailed agreement covering other approaches will be drafted, similar in nature and scope as the LLR agreement discussed below.

Loan Loss Reserve Fund. A LLR is intended to enable the FI to offer longer terms, lower interest rates, and broader access to finance. We anticipate LLR arrangements to have leverage ratios between 10:1 and 20:1. This leverage ratio may be higher or lower, depending on the risk assessment by the FI respondent to this RFP.

CMAPI grant monies will be deposited with the partner FI pursuant to an LLR Agreement between CMAP and the FI. The LLR Agreement will create three accounts: an escrow account (“Escrow Account”), a reserve account (“Reserve Account”), and an account to house funds that are retired from the Reserve Account after Loans have been fully paid (“Reflow Account”), all specifically defined in the LLR Agreement. Monies will first be placed in the Escrow Account at the participant FI. Then, for example, on a quarterly or other basis (the timing of the transfer is another variable that should be determined by applicant), as the FI makes eligible EE Loans, the agreed amount of funds for the loss reserve will be transferred from the Escrow Account to the Reserve Account. Once funds are transferred to the Reserve Account, they are available for the FI to draw on in the defined event of loss. The LLR structure takes a “portfolio approach” to the credit structure of the EE Loan program. The FI will be making a number of EE Loans. The goal of the credit enhancement is to create sufficient loss reserves—from LLR funds and the FI’s own loss provisioning—to cover the estimated level of losses. With such reserves in place, in the event of a Loan default the lender will remain largely whole, at least to recover principal, at loss levels at or below the planned level.

Risk-Sharing Formula. The proposal should specify the ratio of the LLR funds to the total original principal amount of loans in the EE Loan portfolio (achieving a minimum of a 10:1 leverage). The proposal should also specify the share of losses that the LLR will pay. The maximum allowable is 90%.

LLR Agreement. To implement an LLR finance program with a selected FI, an LLR Agreement will be executed by and between the FI and CMAP. Key terms of the LLR Agreement include the following:

- *Definition of the Escrow Account.* The “Escrow Account” will house the original grant monies deposited by CMAP with the partner FI. Funds in this account, and their transfer into the Reserve Account, will be controlled by an Escrow Agreement executed by and between the FI and CMAP.
- *Definition of the Reserve Account.* The “Reserve Account” is available to the FI to cover legitimate principle losses due to default that are otherwise unrecoverable using the FI’s standard default recovery mechanism.

- *Definition of Loss and Event of Loss.* “Loss” will be defined as principal only on the Loan. “Event of Loss” will be tied to the definition of Loan default and acceleration under the FI’s Loan Agreement with its borrower, to be as proposed by the FI. A certain number of days after this event, e.g., 30 days, then the FI can disburse funds from the Reserve Account to cover the agreed loss share.
- *Interest on Accounts.* Interest shall accrue to CMAP on all accounts. Federal regulations state that all interest accrued must be used for eligible program purposes, and this includes “topping off” the LLR to enhance its sustainability over time. CMAP will make the determination on how to appropriate the interest earned in accordance with the federal regulations.
- *Responsibility for and Distribution of Recoveries.* The FI will be responsible for recovery actions on defaulted Loans. Recovered monies, net of reasonable collections costs, will be distributed back to the Reserve Account in proportion to the FI’s share of losses.
- *Underwriting criteria.* The parties will agree in advance on underwriting guidelines for the Loans. FI will be able to protect Loans through the Reserve Account that meet the underwriting criteria. Underwriting criteria can be adjusted during the course of the Program as a mutually re-negotiated and written amendment to the LLR Agreement. The terms of the Loans will be enumerated, including eligible borrowers, eligible projects, minimum and maximum Loan size, Loan tenors, etc.
- *Availability Period.* The timeframe for adding Loans to the portfolio and shifting funds from the Escrow Account to the Reserve Account will be defined and tied to grant requirements.
- *Disposition of Loan Loss Reserve Funds at end of Loan Period.* Funds will remain in the Reserve Account, the amount of which, in a fully subscribed portfolio, will be equal to the leverage ratio percentage times the amount of outstanding loans. When the amount of the loans in the Reserve Account drops below that reserve percentage, the amount in excess will be transferred to the Reflow Account for additional eligible uses under the DOE/EECBG requirements. At this time, it is anticipated that funds transferred to the Reflow Account will be designated to support further EE lending or otherwise enhance credit for EE loans, unless otherwise determined by CMAP per the LLR Agreement (see bullet below on *Reprogramming Funds in the Escrow Account*). Distribution of funds from the Reserve Account to the Reflow Account will occur on the same schedule as funds are transferred under the availability period determined under the above bullet (presumptively monthly or quarterly—FIs should make a recommendation on this point in their response). When the EE Loan portfolio is fully retired (the conditions for this eventuality will also be spelled out in the LLR Agreement), all re-flow Reserve Account funds will be transferred back to the Reflow Account, and, from there the future use of the funds can be redirected by CMAP in accordance with federal DOE requirements. At this time, CMAP anticipates that the monies in this Reflow Account will be on-lent for the purposes of EE projects.
- *Change in leverage ratio.* Please consider whether, upon a lower-than-expected rate of default on the portfolio, the ratio of funds held in the LLR could be reduced.
- *Program Fees.* Under the Program, the partner FI may pay a percentage of the loans as a fee to the program administrator to perform the services requested in this RFP. The details of this fee should be disclosed in the proposal. These fees can be added to the Loan and paid by the borrower, or can be covered through other arrangements as outlined in a proposal.
- *Reprogramming Funds in the Escrow Account and the Reflow Account.* Funds in the Escrow Account and the Reflow Account belong to CMAP. As part of the negotiating process between CMAP and the FI, reasonable lending targets will be established. CMAP will have the option to re-allocate the funds in the Escrow Account, if the targets are not met, to a different credit enhancement or CR3 program area. The Agreement will indicate the ability of CMAP to

reprogram uses of these funds, as needed, to adapt to Program operating experience, such as for incentives to increase marketability and uptake of Loans.

- *Accommodating the portfolio “ramp-up” period.* Before the portfolio builds up, a single loan loss can be a large percentage of the outstanding total Loan principal. Thus, in the beginning, a larger contribution to the Reserve Account may be negotiated to give the FI the necessary level of risk-sharing during the portfolio ramp-up period. The FI is asked to consider this in its response.

The LLR mechanism is not a loan guarantee; it uses the EECBG grant funds to mobilize commercial lending by sharing risk with the partner FI, but it does not eliminate risk for the lender. There is no guarantor in this mechanism. The liability of CMAP will be limited to the grant funding provided only. The FI is at risk for the repayment of all Loan amounts in the EE Loan portfolio in excess of the loan loss reserves provided. Therefore, prudent lending origination and administration must be maintained. The Reserve Account must and will stay in place until the Loan portfolio is retired, at which point any remaining funds will be designated to support further EE lending or another use determined by CMAP.

- *Flexibility to Reprogram Funds.* CMAP maintains the flexibility to reprogram all funds not committed to a reserve account in order to further the program goals and to enable more EE projects. CMAP will continuously evaluate the Program’s success, gauging the effectiveness of the initial designated uses of funds. CMAP will retain the ability to shift funds from one designated use to another or from one FI to another, provided the funds have not been tied directly to a Loan that supports an EE project.

The Agreements will include a provision that will allow CMAP to retain this control over all non-committed funds (the Escrow Account and Reflow Account funds). Until funds are moved from the Escrow Account to the Reserve Account, funds in the Escrow Account can be reprogrammed by CMAP.

SELECTION PROCESS SCHEDULE

On February 7 at 10:30 a.m. CST, a non-mandatory information session will be held in CMAP’s offices, 233 South Wacker Drive (Willis Tower), Suite 800. Call CMAP at 312-454-0400 to be added to the Willis Tower Visitor list. Driver’s license or state ID required for entry into building tower. To join by webinar/conference call, e-mail mmcgrath@cmapp.illinois.gov requesting RFP 060 webinar/conference call information by Thursday, February 3 at noon.

January 28: RFP Issued
February 7: Information Session
February 18: Applications Due
February 25: Finalist Interviews
March 9: Estimated CMAP Board approval

EVALUATION AND AWARD PROCESS

All applications submitted in response to this RFP will be reviewed and analyzed for completeness and the expertise in performing the scope of work requested.

The following criteria will be used to evaluate proposals:

1. Quality of Financial Product

Provision of a loan product that offers C&I building owners a strong incentive to conduct EE retrofits and offers a repayment amount closely in line with anticipated energy savings with highly competitive terms;
The structure of the loans including the eligible borrowers, eligible projects, minimum and maximum loan

sizes, anticipated number of loans made, expected tenors and terms, underwriting guidelines, and interest rate; Sustainability of the program and the ability to continue beyond the project period.

2. Meeting a Demonstrated Need and Market

Demonstrated ability and plan to serve C&I buildings that would not otherwise undertake an EE retrofit or who would be unable to secure necessary financing; Program has a clearly defined market to operate in and draw eligible properties for participation; Program creates a model for servicing this market that could be replicated amongst similar markets or in other locations.

3. Marketing and Outreach Plan

Plan and approach to marketing and recruiting building owners; Commitment to working with CR3 partners to coordinate efforts with larger CR3 marketing plan; Evidence that efforts undertaken will result in an adequate supply of properties to meet program goals.

4. Soundness of Approach

Clarity of plan for implementing the project and meeting stated objectives; Plan for implementing the program will result in the completion of planned retrofits within the specified timeframes; Timeline clearly demonstrates the number of loans and dollars expended over the term of the program; Applicant and partners have demonstrated experience in completing similar projects.

5. Applicant Capacity

Demonstration of required skills and experience to implement project as proposed; Capacity of staff to conduct necessary underwriting, processing, and servicing of loans projected; Capacity to offer the program in the seven county Chicago metropolitan region and the City of Rockford; Demonstrated experience and capacity to oversee and monitor energy efficiency activity including meeting all ARRA reporting requirements and compliance (Davis Bacon, NHPA, NEPA, etc.)

6. Leverage, Impact & Energy Savings

The CR3 Project Partners will evaluate applicants using leverage and impact criteria. . The main purpose of these criteria is to assure that CR3 funds are used in the most effective manner possible. Applicants must offer a leverage of at least 10:1, meaning bringing \$10 of EE retrofit expenditures for every \$1 of CR3 funds expended. Higher leverage ratios will be rated more favorably. Additionally, the CR3 partners will evaluate the impact and potential energy savings from the proposed projects, viewing favorably energy reductions beyond the minimum required to be a retrofit, creation of spin-off private investment in construction, jobs created, energy cost savings, and other positive impacts.

7. Firm Reputation (Based on References)

SECTION 3: Submittal Requirements

Proposals Must be Received at CMAP on or before 3:00 p.m. February 18, 2011

Submissions must be complete in responding to the RFP's major themes and scope of work, and be submitted in the following order:

1. Applicant Background & Experience

Please summarize the applicant and any partner's qualifications and experience to undertake this Program. Identify capacity in terms of staff and other resources necessary to implement the target number of loans within the project timeframe. Identify staff responsible for and relevant experience in providing DOE required data and meeting all ARRA, DOE and EECBG compliance requirements. Describe the level of effort and services the FI will devote and the general management approach the FI will take to make this Program succeed. Please also include a description of any of your institution's products and services that you will utilize in fulfilling the requirements of this RFP and information on the relevant client base that you may be targeting for marketing purposes.

Please provide an organizational chart showing the reporting lines between partners as well as key individuals involved in the program. Please indicate names of those who will play the following roles:

- Program Manager responsible for this Program who will provide the lead and primary point of contact for the program administration;
- Senior FI Officer(s), who will negotiate and execute documents on behalf of the FI, be available if and as needed to discuss policy matters, and provide program leadership;
- Other staff, e.g., legal counsel, risk manager, assistants to the Program Manager; and
- Indicate the number of branch officers, if any, who will be responsible for local Loan origination.

As an attachment, please provide a brief resume of the Program Manager and, if desired, please also provide resumes of other key FI officers or program administration staff to be involved in the Program.

2. Targeted Market and Marketing Plan

Provide a description of who you intend to serve with this program in terms of types of buildings, types of owners, and potential for EE retrofits. Identify the extent to which targeted properties are under-served by current financial products and the potential impact from their participation in this program. Describe your plans for marketing the program, including details on recruitment and screening of potential participants, and plans for working jointly with the CR3 partners.

3. Financial Product & Implementation

Provide a narrative describing the proposed structure and terms of the loans, type and amount of leveraged capital, eligible borrowers, eligible projects, minimum and maximum loan sizes, anticipated number of loans made, expected tenors and terms, underwriting guidelines, interest rate, and the other parameters previously outlined. Outline the expected loan volume (in dollars and number of loans) by quarter for the duration of the project period and identify the extent to which the program could be sustained beyond the project period (e.g. through repayment of borrowed funds or release of loss reserves). If program is sustainable beyond the project period, identify the volume of loans anticipated for three years beyond the project. Include summary of current and past Commercial banking department loan portfolio performance over the past three (3) years. Provide sufficient evidence that program implementation can begin promptly upon contract signing.

If proposing a LLR, please respond to the proposed LLR structure and terms, including FI's proposed LLR risk-sharing formula. Please identify and discuss briefly the FI's position on key points in the LLR Agreement, working off the terms described in Section 2, above, including:

- Parameters of the risk-sharing formula
- Separation and definitions of the Escrow and Reserve Accounts
- Definition of Loss and Event of Loss
- Disposition of funds at the end of the Loan period
- Program fees
- Portfolio ramp-up period
- Reprogramming of funds in the Escrow Account and ideas for alternative uses of these funds to promote the Loans

If not proposing an LLR, please provide a similar level of detail on your proposed mechanisms for achieving the goals outlined in this RFP.

Approach to Credit and Underwriting Guidelines. Please provide a summary description of the FI's approach to (i) credit analysis of borrowers, (ii) underwriting guidelines and criteria for the energy efficiency Loan program, distinguished by customer market segment, and (iii) credit screening. Please address the Program goal of broadening access to finance and how the LLR can support this goal.

Loan origination and administration. Please provide a description of how the loan application procedure will work, description of requirements (or a checklist) for loan origination, and relevant servicing provisions (such as procedures for handling late payments or defaults).

Timeline and Production Goals. Please provide your anticipated timeline for program set-up and implementation, including the estimated number and dollar value of loans issued per quarter for the program period. If the program is sustainable beyond the program period, indicate an estimated number and value of loans for three years beyond the program period.

Compliance and Oversight: Please describe the process for oversight and monitoring including meeting all ARRA reporting requirements and compliance requirements (Davis Bacon, NHPA, NEPA, etc.)

4. Preliminary Loan Product Term Sheets

The respondent shall also sign and submit the "Preliminary Loan Product Term Sheet", (Attachment 1). Provide a term sheet detailing all lending product specifications for each financial product recommended.

5. Leverage, Impact, Energy Savings, and Sustainability

Provide a narrative description of how the proposal will leverage other resources and create energy savings and other impacts described in section 2. Identify the extent to which the proposed program would be sustainable beyond the end of the CR3 project period and how it would contribute to creating a lasting resource for conducting energy efficiency retrofits in C&I buildings.

6. Capital Funds Commitment

Provide the source and description of the funds available to be leveraged with this proposal, and include any letters of commitment.

7. References

At least three references, including individual contact name, name of company and phone number, that CMAP may contact regarding the consultant's qualifications to undertake this project.

8. Letters of Commitment

Firms that plan on sub-contracting or relying on any other organization to do some of the work, provide services or equipment must include a letter from that organization describing their planned participation and commitment.

9. Bidder Forms

The respondent shall also sign and submit the "Certificate Regarding Workers' Compensation Insurance," Attachment 2, and the "Information to be Provided by Bidder," Attachment 3.

Submission of Proposals

Three (3) paper copies of all applications as well as one (1) electronic version in PDF format on CD ROM or USB drive must be submitted no later than 3:00 p.m., February 18, 2011. Submissions must be in a sealed package or envelope. The applicant's organization name and address shall appear in the upper left corner of the package.

Submission of application by fax or e-mail is not acceptable. Submissions may be delivered to CMAP in person or sent (by U.S. Postal Service or other reliable means) to the following address:

Chicago Metropolitan Agency for Planning
Attn: Grant/Contract Officer
Response to RFP No. 060
233 S. Wacker Drive, Suite 800
Chicago, IL 60606

There will be no public opening of applications. Late submissions will be rejected and returned unopened.

Questions may be referred to Margaret McGrath, (312) 386-8788 or Email: mmcgrath@cmapp.illinois.gov.

SECTION 4: Contractual Agreement and Rights

Contractual Agreement

The contract CMAP anticipates awarding as a result of this RFP and subsequent rate submissions and negotiations, if any, will indicate the service requirements, time periods involved and applicable hourly rates. In addition, it will include the General Provisions, Section 5 hereto, and Special Provisions, Section 6 hereto, and Attachment 4 "Information to be provided by Firm at Contract Execution" which will apply to the contract.

Reservation of Rights

CMAP reserves the following rights if using them will be more advantageous to CMAP:

- a. Withdraw this application at any time without prior notice.
- b. Accept or reject any and all submissions, or any item or part thereof
- c. Postpone qualifications due date.
- d. Not award a contract to any submitter responding to this application.
- e. Award a contract without negotiations or discussions.

Contractors who are or have been seriously deficient in current or recent contract performance in the absence of evidence to the contrary or circumstances properly beyond the control of the Contractor shall be presumed to be unable to meet these requirements. Past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.

Materials submitted in connection with this application become the property of the Chicago Metropolitan Agency for Planning regardless of whether or not the proposing organization's proposal is selected.

SECTION 5: General Provisions

The following provisions apply to the solicitation to which this section is attached and to any contract that results from the solicitation:

1. Complete Agreement.

- a. This Agreement (which also may be herein referred to as "Contract"), including all exhibits and other documents incorporated or referenced in the agreement, constitutes the complete and exclusive statement of the terms and conditions of the agreement between CMAP and Contractor and it supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions.
- b. Order of Precedence: Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of the executed contract, including its exhibits; (2) the provisions of the RFP on which the contract is based including any and all Addendums; (3) the proposal submitted to CMAP by the Contractor in response to said RFP; and (4) any other documents cited or incorporated herein by reference.
- c. CMAP's failure to insist in any one or more instances upon the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of CMAP's right to such performance by Contractor or to future performance of such terms or conditions and Contractor's obligation in respect thereto shall continue in full force and effect. Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions that can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve it from responsibility for successfully performing the work without additional expense to CMAP.
- d. CMAP assumes no responsibility for any understanding or representations made by any of its officers, employees or agents prior to the execution of this Agreement, unless such understanding or representations by CMAP are expressly stated in this Agreement.
- e. Changes: CMAP may from time to time order work suspension or make any change in the general scope of this Agreement including, but not limited to changes, as applicable, in the drawings, specifications, delivery schedules or any other particular of the description, statement of work or provisions of this Agreement. If any such change causes an increase or decrease in the cost or time required for performance of any part of the work under this Agreement, the Contractor shall promptly notify CMAP thereof and assert its claim for adjustment within thirty (30) days after the change is ordered. A written amendment will be prepared for agreement between CMAP and the Contractor for changes in scope, time and/or costs. No amendments are effective until there is a written agreement that has been signed by both parties. No claim by the Contractor for equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.
- f. Changes to any portion of this Agreement shall not be binding upon CMAP except when specifically confirmed in writing by an authorized representative of CMAP.

2. Chicago Metropolitan Agency for Planning Designee. Only the Executive Director of CMAP, or designee, shall have the authority to act for and exercise any of the rights of CMAP as set forth in this

Agreement, subsequent to and in accordance with the authority granted by CMAP's Board of Directors.

3. Allowable Charges. No expenditures or charges shall be included in the cost of the Project and no part of the money paid to the Contractor shall be used by the Contractor for expenditures or charges that are: (i) contrary to provisions of this Agreement or the latest budget approved by a duly-authorized official of CMAP; (ii) not directly for carrying out the Project; (iii) of a regular and continuing nature, except that of salaries and wages of appointed principal executives of the Contractor who have not been appointed specifically for the purposes of directing the Project, who devote official time directly to the Project under specific assignments, and respecting whom adequate records of the time devoted to and services performed for the Project are maintained by the Contractor may be considered as proper costs of the Project to the extent of the time thus devoted and recorded if they are otherwise in accordance with the provisions hereof; or (iv) incurred without the consent of CMAP after written notice of the suspension or termination of any or all of CMAP's obligations under this Agreement.
4. Reports and Methods of Payment.
 - a. Based on services performed, Contractor may submit invoices as frequently as once a month. CMAP is committed to reducing paper use and has established an electronic invoicing system. All invoices are to be submitted through email to:
accounting@cmap.illinois.gov
 - b. Subject to the conditions of this Agreement, CMAP will honor invoices in amounts deemed by it to be proper to insure the carrying out of the approved scope of services and shall be obligated to pay the Contractor such amounts as may be approved by CMAP. Invoices shall detail expenses and amount of time spent on CMAP assignments. If an invoice is not acceptable, CMAP shall promptly provide the Contractor a written statement regarding its ineligibility or deficiencies to be eliminated prior to its acceptance and processing.
 - c. All payments will be transferred electronically to Contractor's business bank account. The successful Contractor will be requested to provide transfer numbers for the business bank account when the contract is finalized.
5. Audit and Access to Records.
 - a. The Contractor and its subcontracts under this Agreement shall preserve and produce upon request of the authorized representatives of CMAP all data, records, reports, correspondence and memoranda of every description of the Contractor and its subcontractors, if any, under this Agreement relating to carrying out this Agreement for the purposes of an audit, inspection or work review for a period of three (3) years after completion of the project, except that:
 - (1) If any litigation, claim or audit is started before the expiration of three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
 - (2) Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after its final disposition.
 - b. The Contractor shall include in all subcontracts, if any, under this Agreement a provision that CMAP will have full access to and the right to examine any pertinent books, documents, papers, and records of any such subcontractor involving transactions related to the subcontract for three (3) years from the final payment under that subcontract except that:

- (1) If any litigation, claim or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- (2) Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after its final disposition.

The term "subcontract" as used in this clause excludes purchase orders not exceeding \$2,500.

6. Suspension. If the Contractor fails to comply with the special conditions and/or the general terms and conditions of this Agreement, CMAP may, after written notice to the Contractor, suspend the Agreement and withhold further payments or prohibit the Contractor from incurring additional obligations of funds pending corrective action by the Contractor. If corrective action has not been completed within sixty (60) calendar days after service of written notice of suspension, CMAP shall notify the Contractor in writing that the Agreement has been terminated by reason of default in accordance with paragraph 11 hereof. CMAP may determine to allow such necessary and proper costs which the Contractor could not reasonably avoid during the period of suspension provided such costs meet the provisions of the U.S. Office Management and Budget Circular A-87 in effect on the date first above written.

7. Termination.

- a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure (hereinafter termed "Termination by Default") by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be affected unless the other party is given (i) not less than seven (7) calendar days written notice (delivered by certified mail, return receipt requested) of intent to Termination by Default, and (ii) an opportunity for consultation with the terminating party prior to Termination by Default.
- b. This Agreement may be terminated in whole or in part in writing by CMAP for its convenience (hereinafter termed "Termination for Convenience"), provided that the Contractor is given not less than seven (7) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate.
- c. If Termination by Default is effected by CMAP, an equitable adjustment in the price provided for in this Agreement shall be made, but (i) no amount shall be allowed for anticipated profit on unperformed services or other work, and (ii) any payment due to the Contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to CMAP by reason of the Contractor's default. If Termination by Default is effected by the Contractor, or if Termination for Convenience is effected by CMAP, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide payment to the Contractor for services rendered and expenses incurred prior to termination, in addition CMAP may include cost reasonably incurred by the Contractor relating to commitments which had become firm prior to termination.
- d. Upon notice of termination action pursuant to paragraphs (a) or (b) of this clause, the Contractor shall (i) promptly discontinue all services affected (unless the notice directs otherwise) and (ii) deliver or otherwise make available to CMAP all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing this Agreement, whether completed or in process.
- e. Upon termination pursuant to paragraphs (a) or (b) of this clause, CMAP may take over the work and prosecute the same to completion by agreement with another party otherwise.

- f. In the event the Contractor must terminate this Agreement due to circumstances beyond its control, the termination shall be deemed to have been effected for the convenience of CMAP. In such event, adjustment of the price provided for in this Agreement shall be made as provided in paragraph c of this clause.
8. Remedies. Except as may be otherwise provided in this Agreement, all claims, counterclaims, disputes and other matters in question between CMAP and the Contractor arising out of or relating to this Agreement or the breach thereof will be decided by arbitration. If the parties hereto mutually agree, a request for remedy may be sought from a court of competent jurisdiction within the State of Illinois, County of Cook.
9. Equal Employment Opportunity. The Contractor will comply with Executive Order 11246 entitled "Equal Employment Opportunity," as amended by U.S. Department of Labor regulations (41 CFR Part 60). In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or an applicant for employment because of race, religion, color, sex, national origin, ancestry, or physical or mental handicap unrelated to ability. The Contractor shall take affirmative actions to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, national origin, ancestry, or physical or mental handicap unrelated to ability. Such actions shall include, but not be limited to, employment, promotion, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay, other forms of compensation, and selection for training or apprenticeship. The Contractor shall cause the provisions of this paragraph to be inserted into all subcontractors work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that such provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
10. Small and Minority Business Enterprise. In connection with the performance of this Agreement the Contractor will cooperate with CMAP in meeting its commitments and goals with respect to the maximum utilization of small business and minority business enterprises, and will use its best efforts to insure that small business and minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.
11. Political Activity. No portion of funds for this subcontract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.
12. Prohibited Interest.
- a. No officer or employee of CMAP and no member of its governing body and no other public official of any locality in which the Project objectives will be carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such objectives shall (i) participate in any decision relating to any subcontract negotiated under this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; or (ii) have any financial interest, direct or indirect, in such subcontract or in the work to be performed under such contract.
 - b. No member of or delegate of the Illinois General Assembly or the Congress of the United States of America, and no federal Resident Commissioner, shall be admitted to any share hereof or to any benefit arising herefrom.
 - c. The Contractor warrants and represents that no person or selling agency has been employed or retained to solicit or secure this Agreement, upon an agreement or understanding for a commission, percentage, bonus, brokerage or contingent fee, or gratuity, excepting its bona fide employees. For breach or violation of this warranty CMAP shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage bonus, brokerage or contingent fee, or gratuity.

13. Federal Reporting Standards.

- a. The Contractor agrees that any material or design specified by the Contractor or supplied by the Contractor pursuant to this Agreement shall not infringe any patent or copyright and the Contractor shall be solely responsible for securing any necessary licenses required for patented or copyrighted material used by the Contractor.
- b. If any claim is brought against CMAP by third parties for alleged infringement of third-party patent and copyright and intellectual rights, which claim is caused by breach of the Contractor's promise as contained in paragraph a of this clause, the Contractor shall save harmless and indemnify CMAP from all loss, damage or expense (including attorney's fees) due to defending CMAP from such claim.
- c. If the principal purpose of this Agreement is to create, develop or improve products, processes or methods; or to explore into fields which directly concern public health, safety or welfare, or if the Project is in a field of science or technology in which there has been little significant experience outside of work funded by federal assistance; and any discovery or invention arises or is developed in the course of or under this Agreement, such invention or discovery shall be subject to the reporting and rights provisions of U.S. Office of Management and Budget Circular No. A-102, and to the pertinent regulations of the grantor agency(ies) in effect on the date of execution of this Agreement. The Contractor shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts under this Agreement involving research, developmental, experimental or demonstration work.

14. Assignment.

- a. This agreement shall be binding upon, and inure to the benefit of, the respective successors, assigns, heirs, and personal representatives of CMAP and Contractor. Any successor to the Contractor's rights under this Agreement must be approved by CMAP unless the transaction is specifically authorized under federal law. Any successor will be required to accede to all the terms, conditions and requirements of the Agreement as a condition precedent to such succession.
- b. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of CMAP hereto, provided, however, that claims for money due or to become due to the Contractor from CMAP under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished to CMAP.

15. Subcontracts.

- a. Any subcontractors or outside associates or consultants required by the Contractor in connection with the services covered by this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Any substitutions in or additions to such subcontractors, associates or consultants will be subject to the prior approval of CMAP.
- b. All subcontracts for work under this Agreement shall contain those applicable provisions which are required in this Agreement.
- c. The Contractor may not subcontract services agreed to under this Agreement without prior written approval of CMAP.

16. Conflict of Interest. In order to avoid any potential conflict or interest, the Contractor agrees during the term of this Agreement not to undertake any activities which could conflict directly or indirectly

with the interest of CMAP. Contractor shall immediately advise CMAP of any such conflict of interest. CMAP shall make the ultimate determination as to whether a conflict of interest exists.

17. Publication. CMAP shall have royalty-free, nonexclusive and irrevocable license to reproduce, publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data or other materials specifically prepared under this Agreement, and to authorize other material to do so. The Contractor shall include provisions appropriate to effectuate the purpose of this clause in all subcontracts for work under this Agreement.
18. Identification of Documents. All reports, maps, and other documents completed as part of this Agreement, other than documents exclusively for internal use within the Contractor's offices, shall carry the following notation on the front cover or a title page or, in the case of maps, in the same area which contains the name of CMAP and of the Contractor. "This material was prepared in consultation with CMAP, the Chicago Metropolitan Agency for Planning, (<http://www.cmap.illinois.gov>)."
19. Force Majeure. Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control including, but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the Federal, state or local government; national fuel shortage; or a material act of omission by the other party; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.
20. Workers' Compensation Insurance. The Contractor and any subcontractors shall, at their own expense, obtain and maintain Workers' Compensation insurance to cover persons employed in connection with services under this agreement. The limits for the Worker's Compensation coverage shall be no less than the statutory limits required by the State of Illinois. A certificate of insurance must be included with this contract.
21. Independent Contractor. Contractor's relationship to CMAP in the performance of this Agreement is that of an independent contractor. Contractor's personnel performing work under this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of CMAP. Contractor shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including, but not limited to, social security, income tax withholding, unemployment compensation, workers' compensation insurance and similar matters.
22. Federal, State and Local Laws. Contractor warrants that in the performance of this Agreement it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder. Since laws, regulations, directives, etc. may be modified from time-to-time, the contractor shall be responsible for compliance as modifications are implemented. The Contractor's failure to comply shall constitute a material breach of this contract.
23. Hold Harmless and Indemnity. Contractor shall indemnify, defend and hold harmless CMAP, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss, or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct of Contractor, its officers, directors, employees, agents, subcontractors or suppliers, in connection with or arising out of the performance of this Agreement.

Federally Funded Agreements

All of the requirements listed in **Federally Funded Agreement Certifications**, contained in Attachment 4, "Information to be Provided by Firm at Contract Execution", apply to the federally funded project. The selected firm will be required to sign the certifications and agree to include these requirements in each contract and subcontract financed in whole or in part with federal assistance.

SECTION 6: Special Provisions

1. Workers' Compensation. The State of Illinois Worker's Compensation Code requires the securing of workers' compensation by all non-state employers. The Submitter shall attest to understanding and complying with the State of Illinois Workers' Compensation Code requirement and submit a completed "Certificate Regarding Workers' Compensation Insurance," Attachment 2 to the RFP. In addition, the Submitter shall provide and maintain a waiver of subrogation endorsement.

Attachment 1: Preliminary Loan Product Term Sheets

In response to Chicago Metropolitan Agency for Planning (CMAP) Request for Proposal (RFP) 060 Selection of Loan and Program Administrator(s) for Commercial and Industrial (C&I) Properties Retrofit fund Program of the Chicago Region Retrofit Ramp-up (CR3) program dated January 28, 2010, the undersigned, as an individual(s) with the authority to bind the Proposer, understands and agrees to the specifications, terms, conditions and provisions of the RFP and product proposed below unless otherwise modified by mutual agreement of the parties. It is also agreed that the proposal submitted in response to the RFP is valid for ninety (90) calendar days from the proposal due date.

Please provide term sheets for each proposed product in the following format. Please provide additional specifics where possible. Attach additional sheets if necessary. For ease of entry, feel free to copy and paste this format; insert lines as necessary.

Borrowers: Please describe your target market. Eligible borrowers include owners of Commercial & Industrial buildings in the seven county metropolitan Chicago area (Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will counties) and the City of Rockford.

Lender: FI, after having entered Agreements with CMAP.

Use of Proceeds & Eligible Projects: Please define the types of energy efficiency improvements that will be the focus of your loan program. Loans must fund investment in energy efficiency measures in eligible buildings that meet certain efficiency criteria, in energy efficiency projects, and/or in building repairs necessary to implement the energy efficiency improvements. Equipment engineering and installation costs will be eligible.

Sources of Funds: Borrower will contribute a minimum of ___% own funds toward total Project Costs. Energy efficiency grants can be considered as borrower equity.

Minimum Loan: \$_____ (FI requested to propose).

Maximum Loan: \$_____ (FI requested to propose).

Loan Term: FI requested to propose Loan term.

Payment Schedule: FI requested to propose payment schedule. Mortgage-style amortization would allow the payments to be level over the Loan term.

Interest Rate: FI requested to define range based on Loan size, borrower credit, security, the mitigated risk (loan loss reserve), and other criteria.

Prepayment Option: FI requested to propose borrower prepayment options.

Fees: FI requested to propose any additional fees including loan origination fees.

Loan Disbursement: FI requested to propose disbursement terms. FI can propose disbursing the Loan in one or several installments

Loan Repayment & Security:

To be proposed by FI. Both secured and unsecured Loan products may be proposed by FI. Sources of security could include the following:

- a) For secured Loans, a deed of trust may be required, with anticipated loan-to-value ratios of 80-85% and up to 100%. It is expected that a prudent portion of estimated energy cost-savings will be included in this calculation.
- b) First security interest in installed equipment can be obtained, and FI may make a UCC-1 security filing.
- c) LLR funds.

Underwriting Criteria: FI requested to propose underwriting criteria. Sample criteria are for the commercial borrowers are indicated below:

- Minimum Debt Service Coverage ____
- Minimum EBITDA _____.
- Borrower's own funds contributing minimum ____% [e.g. 20%] of project capital costs

Loan Application: Borrower shall submit the following documents to the FI to apply for the Loan (to be determined by FI, examples follow):

1. Loan application (provided by FI and completed by borrower).
2. Tax returns for last two years or audited financial statements for last two years
3. Other additional documents (to be defined by FI).

**Loan Origination
Procedures &
Schedule:**

FI is requested to define Loan origination procedures and schedule, including FI response time for processing Loan applications, rendering credit decisions once complete information is received, and closing Loans on accepted applications.

If awarded a contract, the undersigned hereby agrees to sign the contract and to furnish the necessary certificates if any.

Proposer's Authorized

Signatory (Print): _____

Signature: _____

Title: _____

Company Name: _____

Address: _____

Telephone Number: _____

Date: _____

Attachment 2: Certificate Regarding Workers' Compensation Insurance

Certificate Regarding Workers' Compensation Insurance

In conformance with current statutory requirements of Section 820 ILCS 305/1 et. seq., of the Illinois Labor Code, the undersigned certifies as follows:

"I am aware of the provisions of Section 820 ILCS 305/1 of the Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with such provisions before commencing the performance of the work of this contract."

Bidder/Contactor _____

Signature _____

Name and Title _____

Date _____

Attachment 3: Information to be provided by Bidder

The Bidder is required to supply the following information (if necessary, attach additional sheets):

Firm Name: _____ Contact Person: _____

Business Address:

Telephone: (____) _____ FAX: (____) _____ E-mail: _____

Years of Experience: _____

Type of Firm – Sole Proprietor, Partnership, Corporation, Joint Venture, Etc.: _____

Organized under the laws of state of: _____

Business License No.: _____ Business License Expiration Date: _____

List names and addresses of owners of the firm or names and titles of officers of the corporation:

Client list of services rendered currently and/or in the recent past:

<u>Type of Service/Product</u>	<u>Date Completed</u>	<u>Name and Address of Client</u>	<u>Contact Name and Phone Number</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Credit References (Include contact person's name, address, and telephone number for at least three references, one of which must be the Bidder's bank):

a. _____

b. _____

c. _____

Bidder hereby certifies that it (check one): _____ IS _____ IS NOT an eligible Disadvantaged Business Enterprise (DBE) as defined Sec. III, provision 31g1). If "IS" is checked, attach copy of document that certifies Bidder's status as a DBE.

Federally Funded Agreement Certifications

Department of Energy – Chicago Region Retrofit Ramp-Up (CR3)

- A. Standard Assurances.** The Undersigned assures that it will comply with all applicable federal statutes, regulations, executive orders, federal circulars, and other federal requirements in carrying out any project supported by federal funds. The Undersigned recognizes that federal laws, regulations, policies, and administrative practices may be modified from time to time and those modifications may affect project implementation. The Undersigned agrees that the most recent federal requirements will apply to the project.
- B. Certification Regarding Lobbying.** The Undersigned certifies, to the best of his or her knowledge and belief, that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - (3) The Undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. Additional Lobbying Representation.

Undersigned which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, are not eligible for the receipt of Federal funds constituting an award, grant, or loan.

As set forth in section 3 of the Lobbying Disclosure Act of 1995 as amended, (2 U.S.C. 1602), lobbying activities are defined broadly to include, among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative, regulatory, and program administrative matters.

Check the appropriate block:

The applicant is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986? Yes No

If you checked "Yes" above, check the appropriate block:

The Undersigned represents that after December 31, 1995 it has has not engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

D. Nondiscrimination Assurance. As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, the Undersigned assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Undersigned receives federal assistance awarded for this Program.

Specifically, during the period in which federal assistance is extended to the project, or project property is used for a purpose for which the federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Undersigned retains ownership or possession of the project property, whichever is longer, the Undersigned assures that:

1. Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.
2. It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of project services or benefits may be filed with U.S. DOE. Upon request by U.S. DOE, the Undersigned assures that it will submit the required information pertaining to its compliance with these requirements.
3. It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.
4. Should it transfer real property, structures, or improvements financed with federal assistance to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the federal assistance is extended or for another purpose involving the provision of similar services or benefits.
5. The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.
6. It will make any changes in its Title VI implementing procedures as U.S. DOE may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d,.

E. Control of Property. Undersigned certifies that the control, utilization and disposition of property or equipment acquired using federal funds is maintained according to the provisions of A-102 Common Rule.

F. Cost Principles. The cost principles of this Agreement are governed by the cost principles found in Title 48, Code of Federal Regulations, Subpart 31, as amended; and all costs included in this Agreement are allowable under Title 48, Code of Federal Regulations, Part 31, as amended.

G. Debarment, Suspension, and other Responsibility Matters

- (1) The Undersigned certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery; falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the Undersigned is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

H. Single Audit. The Single Audit Act of 1984 (Public Law 98-502) and the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. require the following:

1. State or local governments that receive \$500,000 or more a year in federal financial assistance shall have an audit made in accordance with the Office of Management and Budget (OMB) Circular No. A-133.
2. State or local governments that receive less than \$500,000 a year shall be exempt from compliance with the Act and other federal requirements.
3. Nothing in this paragraph exempts state or local governments from maintaining records of federal financial assistance or from providing access to such records to federal Agencies, as provided for in federal law or in (OMB) Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations."
4. A copy of the audit report must be submitted to CMAP within 30 days after completion of the audit, but no later than one year after the end of the Contractor's fiscal year.

I. Davis Bacon. Wage Rates Requirements. In accordance with ARRA section 1606 and 2 CFR §176.190, if applicable, all laborers and mechanics employed by the Parties on projects funded directly by, or assisted in whole or in part with funds under ARRA, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act). Guidance on the Davis-Bacon Act compliance requirements may be viewed at http://www1.eere.energy.gov/wip/davis-bacon_act.html. The Parties shall submit all applicable prevailing wage determinations for any and all labor and mechanic work to be performed, for EMT

approval.

- J. National Environmental Policy Act (NEPA) Requirements.** To the extent applicable, the Undersigned certifies it will comply with the NEPA requirements. Use of Federal funds is restricted if action would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share. You are prohibited from implementing energy efficiency improvements and renewable energy generation opportunities, including demolition, repair, replacement, installation, construction, disposal, or alteration activities until such time that you comply with the Waste Stream and Historic Preservation clauses.

Strong preference should be given to projects that are eligible for categorical exclusions from National Environmental Policy Act (“NEPA”) review. Projects that are not eligible for categorical exclusions should be considered if they demonstrate exceptional energy savings and job creation potential; however, these projects will be required to go through a more extensive environmental review process with the DOE. The following activities are eligible for categorical exclusion from NEPA review, as set forth in guidance provided by DOE:

- Retrofits of existing buildings or facilities (residential, commercial, industrial, government, academic) with energy efficient equipment. Many types of projects can fall into this category – insulation, LED lighting, HVAC upgrades, weather sealing, ENERGY STAR appliances, replacement of windows and doors, etc. – however, it probably would not include massive expansions of buildings or facilities. For historic structures, it may be necessary that the retrofits maintain the building’s historic character (e.g., replacement of windows and doors with appropriate designs).
- Installation of small renewable energy sources located on existing buildings or existing facilities – photovoltaics, wind turbines, solar thermal hot water, geothermal heat pumps, combined heat and power systems. There are no bright lines here, but the following are some rough rules of thumb as to what could be deemed to be small:
 - Photovoltaics – appropriately sized units on existing rooftops and parking shade structures; or 60kW systems or smaller installed on the ground within the boundaries of an existing facility.
 - Wind turbines – 20kW or smaller.
 - Solar thermal hot water – appropriately sized units for residences or small commercial buildings.
 - Geothermal heat pumps – 10 tons of capacity or smaller.
 - Geothermal power plants – 300kW or smaller (factors such as open or closed loop and fluid type play a role).
 - Combined heat and power systems – systems sized to boilers appropriate to the buildings in which they are located.
 - Hydropower – because of the site-specific issues relating to hydropower systems and the fact that they are rarely installed at the facility they serve, it is unlikely that they can be deemed small without additional information.
- Individual systems larger than those above may be categorically excluded based on additional information provided by the applicant regarding a specific installation. Very large renewable energy systems (e.g., wind farms or district geothermal heat systems) that serve many customers built on a green field site would definitely not fall within a categorical exclusion; nor would a large facility comprising many small sources. Finally, installing any renewable energy system on a historic structure could require further consideration under the National Historic Preservation Act or other statutes.

- Energy efficient or renewable energy-powered emergency systems (lighting, cooling, heat, shelter) installed in existing buildings and facilities.
- Alternative fueling tanks and systems installed on existing facilities (but not a large biorefinery); purchase of alternative fuel vehicles.
- Financial incentive programs – rebates and energy savings performance contracts for existing facilities or for energy efficient equipment, provided that the incentives are not so large that they would be deemed to be grants that essentially create projects that would not otherwise exist. For example, giving a wind farm that cost \$100 million a sum of \$50 million and calling it a rebate would not fall within such a categorical exclusion; a 10% rebate on the purchase and installation of energy-efficient windows would.

K. National Historic Preservation Act (NHPA). To the extent applicable, the Undersigned certifies it will comply with the NHPA requirements. Prior to the expenditure of project funds to alter any historic structure or site, the Undersigned will ensure that it is compliant with Section 106 of the NHPA, consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places.

Agreement between the State Historic Preservation Agency and DOE has been made to expedite Historic Preservation reviews. In order to ensure compliance under the terms of the Agreement, the applicant must comply with the guidance set forth in this document. Projects that involve properties greater than fifty (50) years old and not listed on Attachment C shall be submitted to the State Historic Preservation Office for review. The checklist can be found at:
<http://www.illinoishistory.gov/PS/rcdocument.htm>

EECBG UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

A. Category 1 – No Consultation required

DOE and the SHPO have concluded that the following undertakings do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a)(1):

1. General efficiency measures not affecting the exterior of the building:

- a. Energy audits and feasibility studies
- b. Weatherization of mobile homes and trailers
- c. Caulking and weather-stripping around doors and windows in a manner that does not harm or obscure historic windows or trim.
- d. Water conservation measures -like low flow faucets, toilets, shower heads, urinals - and distribution device controls
- e. Repairing or replacing in kind existing driveways, parking areas, and walkways with materials of similar appearance
- f. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions
- g. Ventilating crawl spaces
- h. Replacement of existing HVAC equipment including pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers that do not require a change to existing ducting, plumbing, electrical, controls or a new location, or if ducting, plumbing, electrical and controls are on the rear of the structure or not visible from any public right of way.

- i. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors and carbon monoxide detectors (wired or non-wired)
- j. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors, provided the work conforms with applicable state and local permitting requirements
- k. Adding variable speed drive motors
- l. Insulation of water heater tanks and pipes
- m. Furnace or hot water tank replacement that does not require a visible new supply or venting

2. Insulation measures not affecting the exterior of the building:

- a. Thermal insulation installation in walls, floors and ceilings (excluding spray foam insulation)
- b. Duct sealing, insulation, repair or replacement in unoccupied areas
- c. Attic insulation with proper ventilation; if under an effective R8 - add additional R-19 up to R-38 (fiberglass bat only)
- d. Band joist insulation - R-II to R19 as applicable
- e. Water heater tank and pipe insulation

3. Electric base load measures not affecting the exterior the building:

- a. Appliance replacement (upgrade to EnergyStar appliances)
- b. Compact fluorescent light bulbs
- c. Energy efficient light fixtures, including ballasts (Replacement)
- d. LED light fixtures and exit signs (Replacement)
- e. Upgrade exterior lighting (replacement with metal halide bulbs, LEDs, or others) along with ballasts, sensors and energy storage devices not visible from any public right of way

L. The American Recovery and Reinvestment Act (ARRA) of 2009. The Undersigned certifies it will comply with all terms and conditions in the ARRA relating generally to governance, accountability, transparency, data collection and resources as specified in ARRA.

1. Flow Down Requirement. The ARRA special terms and conditions must be included in any subaward.
2. Segregation of Costs. The obligations and expenditures related to funding under ARRA must be segregated.
3. Prohibition on Use of Funds. None of the funds provided under this agreement derived from ARRA 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. Protecting State and Local Government and Contractor Whistleblowers. ARRA Section 1553 states that an employee of any non-Federal employer receiving covered funds under the ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties to certain agencies, organizations or individuals information that the employee believes is evidence of specified actions.
5. False Claims Act. Recipient and subrecipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict

- of interest, bribery, gratuity or similar misconduct involving those funds.
6. Reporting and Registration Requirements Under Section 1512 of the Recovery Act. Recipients and subrecipients 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 through ARRA should be American-made.
 8. Wage Requirements. ARRA requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.
 9. Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients. To maximize the transparency and accountability of funds authorized under ARRA recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.
 10. Davis-Bacon Act and Contract Workhours and Safety Standard Act. If applicable, Recipient must perform requirements of the Davis-Bacon Act.

L. Certifications and Assurances Required by the U.S. Office of Management and Budget (OMB) (SF-424B and SF-424D). As required by OMB, Undersigned certifies that it:

1. Has the legal authority and the institutional, managerial, and financial capability (including funds sufficient to pay the non-federal share of project cost) to ensure proper planning, management, and completion of the project.
2. Will give the U.S. Secretary of Energy, the Comptroller General of the United States, and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;
4. Will initiate and complete the work within the applicable project time periods;
5. Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:
 - Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;
 - Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, which prohibit discrimination on the basis of sex;
 - Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;
 - The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;
 - The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq., relating to nondiscrimination on the basis of drug abuse;
 - The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C 4541 et seq., relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

- The Public Health Service Act of 1912, as amended, 42 U.S.C. 201 *et seq.*, related to confidentiality of alcohol and drug abuse patient records;
- Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;
- Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided; and
- Any other nondiscrimination statute(s) that may apply to the project.

All of the requirements listed in **Federally Funded Agreements**, paragraphs A through L apply to the federally funded project. The Undersigned agrees to include these requirements in each contract and subcontract financed in whole or in part with federal assistance.

SIGNATURE

As the duly authorized representative of the contractor, I hereby certify that the contractor will comply with the above certifications.

Name of Contractor: _____

Printed Name and Title of Authorized Representative: _____

SIGNATURE

DATE

