

Connecticut Clean Energy Fund

STATE ENERGY PROGRAM

SOLAR THERMAL PROJECT OWNER

SPECIAL TERMS AND CONDITIONS APPLICABLE TO RECEIPT OF RECOVERY ACT FUNDS

Funding is provided from the American Recovery and Reinvestment Act of 2009 (Recovery Act) through the State Energy Program. This document contains the special terms and conditions that apply to the use of these funds.

On all projects, contractors must comply with the Davis- Bacon Act concerning the payment of prevailing wages to mechanics and laborers employed directly upon the site, and for all projects by or for governmental agencies.

All work on public buildings or that constitutes a public work are subject to “Buy American Requirements.”

Additional guidance from the Federal and State governments on the use of funds is expected and contractors are required to meet any new Federal or State requirements.

Project Owner shall comply with all applicable terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in the Act itself and as discussed below.

Project Owner and the CCEF understand that the following provisions may be changed and additional requirements may be added and that each agrees to be bound by such changes, additions, and guidance as may be issued with respect to, and as required under, the Recovery Act or by the State.

I. Reporting Requirements

Project Owner agrees to cooperate fully with the CCEF to enable the CCEF to comply with its reporting requirements under the Recovery Act and to respond to any Federal or State inquiry regarding projects funded under this Agreement. Such cooperation includes, but is not limited to, providing any project-specific information requested by and deemed necessary in the sole discretion of the CCEF.

II. Prohibition on Use of Funds – § 1604 of the Recovery Act

None of the funds provided under this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

III. Access to Records – §§ 902 and 1515 of the Recovery Act

With respect to each Agreement awarded utilizing at least some Recovery Act funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) or of the Comptroller General is authorized to:

- (1) examine any records of contractor or any of its subcontractors or subgrantees, administering such contract that pertain to, and involve transactions related to, the use of funds pursuant to this Agreement; and
- (2) interview any officer or employee of contractor, subgrantee or subcontractor regarding such transactions.

IV. Connecticut State Contracting Obligations

Project Owner understands and agrees that CI, the administrator of the CCEF, is a political subdivision of the State of Connecticut and therefore must comply with Connecticut General Statutes (Conn. Gen. Stat.) § 4a-60 and with Conn. Gen. Stat. § 4a-60a. These statutes provide that every contract to which a political subdivision of the state other than a municipality is a party must contain the provisions below. Project Owner understands and agrees that this Agreement is such a contract. Accordingly, for purposes of this Agreement, Project Owner agrees to comply with the state contracting obligations in this section for the term of this Agreement. For purposes of this Section V, Project Owner and contractor shall have the same meaning, and contract and Agreement shall have the same meaning.

Conn. Gen. Stat. § 4a-60:

“(a) Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions: (1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; and the contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved; (2) The contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the commission; (3) The contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or

understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) The contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f; and (5) The contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56.”

Subsection (c)(1) of Conn. Gen. Stat. § 4a-60:

“Prior to entering into a contract valued at less than fifty thousand dollars for each year of the contract, the contractor shall provide the state or such political subdivision of the state with a written representation that complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section.”

Subsection (c)(2) of Conn. Gen. Stat. § 4a-60:

“Prior to entering into a contract valued at fifty thousand dollars or more for any year of the contract, such contractor shall provide the state or such political subdivision of the state with any one of the following:

(A) Documentation in the form of a company or corporate policy adopted by resolution of the board of directors, shareholders, managers, members or other governing body of such contractor that complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section;

(B) Documentation in the form of a company or corporate policy adopted by a prior resolution of the board of directors, shareholders, managers, members or other governing body of such contractor if (i) the prior resolution is certified by a duly authorized corporate officer of such contractor to be in effect on the date the documentation is submitted, and (ii) the head of the agency of the state or such political subdivision, or a designee, certifies that the prior resolution complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section, or

(C) Documentation in the form of an affidavit signed under penalty of false statement by a chief executive officer, president, chairperson or other corporate officer duly authorized to adopt company or corporate policy that certifies that the company or corporate policy of the contractor complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section and is in effect on the date the affidavit is signed.”

Subsection (h) of Conn. Gen. Stat. § 4a-60:

“The contractor shall include the provisions of subsections (a) and (b) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the

state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.”

Conn. Gen. Stat. § 4a-60a:

“(a) Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions: (1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) The contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) The contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56; and (4) The contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.”

Subsection (b)(1) of Conn. Gen. Stat. § 4a-60a:

“Prior to entering into a contract valued at less than fifty thousand dollars for each year of the contract, the contractor shall provide the state or such political subdivision of the state with a written representation that complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section.”

Subsection (b)(2) of Conn. Gen. Stat. § 4a-60a:

“Prior to entering into a contract valued at fifty thousand dollars or more for any year of the contract, such contractor shall provide the state or such political subdivision of the state with any of the following:

(A) Documentation in the form of a company or corporate policy adopted by resolution of the board of directors, shareholders, managers, members or other governing body of such contractor

that complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section;

(B) Documentation in the form of a company or corporate policy adopted by a prior resolution of the board of directors, shareholders, managers, members or other governing body of such contractor if (i) the prior resolution is certified by a duly authorized corporate officer of such contractor to be in effect on the date the documentation is submitted, and (ii) the head of the agency of the state or such political subdivision, or a designee, certifies that the prior resolution complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section, or

(C) Documentation in the form of an affidavit signed under penalty of false statement by a chief executive officer, president, chairperson or other corporate officer duly authorized to adopt company or corporate policy that certifies that the company or corporate policy of the contractor complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section and is in effect on the date the affidavit is signed.”

Subsection (c) of Conn. Gen. Stat. § 4a-60a:

“The contractor shall include the provisions of subsection (a) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.”

Nondiscrimination Certification. Project Owner represents and warrants that, prior to entering into this Agreement, Project Owner has provided CI with documentation evidencing Project Owner’s support of the nondiscrimination agreements and warranties of the statutory nondiscrimination sections, above. A form of the Nondiscrimination Certification to be signed by the Project Owner is attached.

Campaign Contribution Restrictions. For all state contracts, as defined in Conn. Gen. Stat. § 9-612(g)(1)(C), having a value in a calendar year of \$50,000.00 or more or a combination or series of such agreements or contracts having a value of \$100,000.00 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission’s notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See SEEC Form 11, attached.

V. Project Owner shall also comply with the applicable requirements of:

- (i) Anti-Discrimination and Equal Opportunity requirements
- (ii) Title VI of the Civil Rights Act of 1964
- (iii) Title IX of the Education Amendments of 1972
- (iv) Section 504 of the Rehabilitation Act of 1973
- (v) Age Discrimination Act of 1975
- (vi) Anti-discrimination requirements of program-specific statutes
- (vii) Americans With Disabilities Act
- (viii) State Energy Program Financial Assistance Rules (10 C.F.R. Part 420 et seq.)
- (ix) DOE Financial Assistance Rules (10 C.F.R. Part 600 et seq.)

- VI. Indemnification. Project Owner agrees to indemnify CI, the CCEF, and their respective officers, directors, employees, agents, and affiliates against, and defend and hold each of them harmless, from any and all claims or liabilities related to or arising in any manner from this financing or the Project other than claims or liabilities resulting from the gross negligence or willful misconduct of CI.
- VII. Limitation on Recourse. Project Owner acknowledges that (a) CI is acting hereunder in connection with the fulfillment of its statutory obligation to manage the CCEF, and (b) CI's obligations hereunder and/or relating hereto shall be limited to the extent of the assets of the CCEF available for use and investment by CI. Nothing herein or with respect to the transaction contemplated hereunder shall be deemed to create or impose a general corporate obligation on CI regarding the obligations of the CCEF, and Project Owner shall not have recourse against CI hereunder and/or relating hereto in excess of CCEF assets available for use and investment by CI. All liabilities and obligations of CI under this Agreement are subject and limited to the funding available under Connecticut law.
- VIII. Available Funding. CI and the CCEF shall not be obligated to provide the funding or any portion of the funding under this Agreement if there are insufficient funds for such purpose because of any legislative or regulatory action expressly curtailing, reducing, or eliminating Recovery Act funding.
- IX. Freedom of Information Act. CI is a "public agency" for purposes of the Connecticut Freedom of Information Act ("FOIA"). Accordingly, this Agreement and information received pursuant to this Agreement will be considered public records and will be subject to disclosure under the FOIA, except for information falling within one of the exemptions in Conn. Gen. Stat. Section 1-210(b).

Because only the particular information falling within one of these exemptions can be withheld by CI pursuant to an FOIA request, Project Owner should specifically and in writing identify to CI the information that Project Owner claims to be exempt. Project Owner should further provide a statement stating the basis for each claim of exemption. It will not be sufficient to state generally that the information is proprietary or

confidential in nature and not, therefore, subject to release to third parties. A convincing explanation and rationale sufficient to justify each exemption consistent with General Statutes §1-210(b) must be provided.

Project Owner acknowledges that (1) CI/CCEF has no obligation to notify Project Owner of any FOIA request received by CCEF, (2) CI/CCEF may disclose materials claimed by Project Owner to be exempt if in CI's judgment such materials do not appear to fall within a statutory exemption, (3) CI/CCEF may in its discretion notify Project Owner of FOIA requests and/or of complaints made to the Freedom of Information Commission concerning items for which an exemption has been claimed, but CI/CCEF has no obligation to initiate, prosecute, or defend any legal proceeding, or to seek to secure any protective order or other relief to prevent disclosure of any information pursuant to an FOIA request, (4) Project Owner will have the burden of establishing the availability of any FOIA exemption in any such legal proceeding, and (5) in no event shall CI/CCEF or any of its officers, directors, or employees have any liability for the disclosure of documents or information in CI/CCEF's possession where CI/CCEF, or such officer, director, or employee, in good faith believes the disclosure to be required under the FOIA or other law.

SEEC FORM 11

NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION BAN

This notice is provided under the authority of Connecticut General Statutes 9-612(g)(2), as amended by P.A. 07-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined below):

Campaign Contribution and Solicitation Ban

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract* or *state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or *solicit* contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

Duty to Inform

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

Penalties for Violations

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties--\$2000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of \$2000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or \$5000 in fines, or both.

Contract Consequences

Contributions made or solicited in violation of the above prohibitions may result, in the case of a state contractor, in the contract being voided.

Contributions made or solicited in violation of the above prohibitions, in the case of a prospective state contractor, shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State will not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information and the entire text of P.A 07-1 may be found on the website of the State Elections Enforcement Commission, www.ct.gov/seec. Click on the link to “State Contractor Contribution Ban.”

Definitions:

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

