

Attachment
MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT
DIVISION OF ENERGY
General Terms and Conditions
for
Energy Loan Program

These general terms and conditions highlight requirements especially pertinent to loans made by the Missouri Department of Economic Development-Division of Energy (DED-DE). These general terms and conditions do not set out all of the provisions of the applicable laws and regulations, nor do they represent an exhaustive list of all requirements applicable to this award. These terms and conditions are emphasized here because they are frequently invoked and their violation is of serious concern.

In addition to these terms and conditions, the borrower must comply with all governing requirements of their loan agreement documents, including the federal Common Rule (adopted by federal agencies and contained in specific Codes of Federal Regulation, for each federal agency, under the title "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The Common Rule is fully incorporated by reference into these terms and conditions. The common rule as codified by the federal granting agency can be found at <http://www.whitehouse.gov/omb/grants/chart.html>.

- A. **Method of Payment.** DED-DE will loan to the borrower allowable expenses incurred in performing the scope of the agreed upon project up to the maximum loan amount approved for the borrower. The borrower shall report project expenses and submit to DED-DE the original, signed form provided by DED-DE for payment as required by division/program per the loan agreement documents. Invoices must provide a breakdown of project expenses by the budget categories contained in the loan agreement documents. Upon project completion the borrower shall provide DED-DE with all appropriate documentation including paid invoices, receipts, and payrolls demonstrating expenditure of loan funds. The borrower shall provide DED-DE with the following certification: *I certify that to the best of my knowledge and belief the data above is correct and that all outlays were made in accordance with the agreement and that payment is due and has not been previously requested.*
- B. **Retention and Custodial Requirements for Records.** The borrower shall retain financial records, supporting documents, and other records pertinent to the loan for a period of three years starting from the sooner of the date of the borrower's final loan payment to DED-DE or loan maturity. Authorized representatives of federal awarding agencies, the Comptroller General of the United States, and DED-DE shall have access to any pertinent books, documents, and records of the borrower in order to conduct audits or examinations. The borrower agrees to allow monitoring and auditing by DED-DE and/or authorized representative. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 3-year period, the borrower shall retain records until completion of the action and resolution of all issues arising from said action, or until the end of the regular 3-year period, whichever is later.

1. The Borrower must keep financial and accounting records as required per section 640.663 RSMo:
 - a. A borrower shall establish on its books an energy conservation loan account. Information sufficient to indicate the receipt and expenditure of all funds authorized and allowed under the terms of the loan or other financial assistance shall be entered in this account.
 - b. The borrower shall maintain all internal records directly related to the loan or financial assistance and the project in such a way as to provide for proper auditing of the project.
2. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract, and loan agreement documents. The documentation must be made available by the borrower at DED-DE's request.
3. The borrower shall have procedures in place to minimize the time lapse between money disbursed by DED-DE and money spent by the borrower.

C. **Equipment Use.** The borrower agrees that any equipment purchased pursuant to this agreement shall be used for the intended purpose and shall not be moved from the State of Missouri without approval from DED-DE during the term of the loan agreement. The following standards shall govern the utilization and disposition of equipment acquired with loan funds:

1. **Title.** Title to equipment acquired under this loan will vest with the borrower upon acquisition unless DED-DE requires the title as collateral. Equipment means an article of nonexpendable, tangible personal property. When acquiring replacement equipment, the borrower may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property subject to the approval of DED-DE.
2. **Equipment management.** The borrower agrees to meet the following requirements:
 - a. The borrower must maintain property records which include a description of the equipment, a serial number or other identification number, the source of the property, the acquisition date, cost of the property, percentage of federal or state participation in the cost of the property, and the location, use and condition of the property.
 - b. Any loss, damage, or theft shall be reported to and investigated by local authorities. The borrower shall procure and maintain insurance for damage to equipment purchased with this loan from financially sound and reputable insurance providers in such amounts and covering such risks as are usually carried by companies engaged in the same or similar business and similarly situated. All

insurance policies shall name DED-DE as obligee and shall contain a provision against cancellation without 10 days written notice to DED-DE. In the event the project is damaged or destroyed by casualty, the borrower may rebuild, restore, repair, or replace with the proceeds of the insurance policy. If the borrower determines that such rebuilding, restoration, repair or replacement is not commercially feasible; the borrower shall apply the insurance proceeds to such outstanding loan balance. The borrower shall carry insurance for the duration of the loan term.

c. If the borrower is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

3. Disposition. When original or replacement equipment acquired under a loan is no longer needed but is still secured by this loan, the borrower must notify DED-DE immediately in writing. The borrower may not dispose of the equipment without prior notification to DED-DE.

D. Procurement Standards.

1. The borrower agrees that any contract, agreement, or equipment to be procured under this loan award which was not included in the approved work plan must receive formal DED-DE approval prior to expenditure of funds associated with that contract, agreement, or equipment purchase.
2. The borrower shall use its own procurement procedures provided that procurements conform with the following requirements as they pertain to procurements funded in whole or in part with Federal funds or with the borrower's contribution:
 - a. Reasonable cost. The borrower's procurement procedures must use best commercial practices to ensure reasonable cost for procured goods and services. At a minimum, three (3) sealed bids for any goods or services exceeding \$25,000 must be secured.
 - b. All contracts in excess of the simplified acquisition threshold per 41 U.S.C. 403 (11) must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
 - c. All contracts in excess of the simplified acquisition threshold per 41 U.S.C. 403 (11) must contain suitable provisions for termination for default by the borrower and for termination due to circumstances beyond the control of the contractor.
 - d. All negotiated contracts in excess of the simplified acquisition threshold per 41 U.S.C. 403 (11) must include a provision permitting access of DED-DE, DOE, the Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the

borrower that are directly pertinent to a specific program, for the purpose of making audits, examinations, excerpts, transcriptions, and copies of such documents.

- E. **Borrower responsibilities.** The borrower is the responsible authority, without recourse to DED-DE, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a loan award. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. The borrower should refer matters concerning violations of statutes to such Federal, State or local authority as may have proper jurisdiction.
- F. **Audit Requirements.** DED-DE has the right to conduct audits, including site visits, of borrower at any time.
- G. **State Appropriated Funding.** The borrower agrees that funds expended for the purposes of this loan must be appropriated and made available by the Missouri General Assembly, as well as being awarded by the state agency supporting the project. Therefore, the loan agreement shall automatically terminate without penalty or termination costs if such funds are not appropriated and/or granted. In the event that funds are not appropriated and/or granted for the loan agreement, the borrower shall not prohibit or otherwise limit DED-DE's right to pursue alternate solutions and remedies as deemed necessary for the conduct of state government affairs. The requirements stated in this paragraph shall apply to any amendment or the execution of any option to extend the loan agreement.
- H. **Eligibility, Debarment and Suspension.** By applying for this loan, the borrower verifies that it, its board of directors, and all of its principals are currently in compliance with all state and federal environmental laws and court orders issued pursuant to those laws, and that any environmental violations have been resolved at the time of application. If compliance issues exist, the borrower shall disclose to DED-DE all pending or unresolved violations noted in a Notice of Violation (NOV), administrative order, or civil and criminal lawsuit, but only where those alleged violations occurred in the past three years in the State of Missouri. DED-DE will not make any loan at any time to any party which is debarred or suspended, under federal or state authority, is not current on all taxes due and owing to the State of Missouri, or is otherwise excluded from or ineligible for participation in federal assistance under Executive Order 12549, "Debarment and Suspension." The borrower shall complete a Debarment/Suspension form when required by DED-DE.
- I. **Termination.**
 - 1. **Termination for Cause.** DED-DE may terminate any loan, in whole or in part, at any time before the maturity date whenever it is determined that the borrower has failed to comply with the terms and conditions of the loan agreement documents. DED-DE shall promptly notify the borrower in writing of such a determination and the reasons for the termination, together with the effective date. The loan shall become due and payable in full as of that date.

2. Termination for Convenience. Both DED-DE and borrower may terminate the loan agreement, in whole or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. Any loan funds disbursed to the borrower shall become due and payable in full as of that date.
3. This loan agreement is not transferable to any person or entity without the prior written approval of DED-DE.

J. **Enforcement; Remedies for Noncompliance.** If a borrower falsifies any loan award document or materially fails to comply with any term of the loan DED-DE may take one or more of the following actions, as appropriate:

1. Suspend or terminate, in whole or part, the current loan;
2. Disallow all or part of the cost of the activity or action not in compliance;
3. Temporarily withhold payments pending the borrower's correction of the deficiency;
4. Withhold further loan proceeds from the borrower;
5. Order the borrower not to transfer ownership of assets purchased with loan proceeds without prior written DED-DE approval;
6. Take other remedies that may be legally available, including cost recovery, breach of contract, and suspension or debarment; or
7. Call the loan immediately due and payable with the collection efforts leading up to and including foreclosure or repossession of secured properties and goods.

K. **Borrower's Signature.** The borrower's signature on the application and the loan agreement documents signifies the borrower's agreement to all of the terms and conditions of the loan agreement.

L. **Unauthorized Aliens – Missouri Statutes – RSMo 285.525 – 285.550 Effective January 1, 2009.**

1. Effective January 1, 2009 and pursuant to RSMo 285.530 (1), no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.
2. Any business entity receiving a loan from the state shall file an affidavit affirming that it does not employ unauthorized aliens and is enrolled in a federal work authorization program.

Statutory Requirements

Borrowers must comply with all federal state and local laws relating to employment, construction, research, environmental compliance, and other activities associated with loans from DED-DE. Failure to abide by these laws is sufficient grounds to cause the loan to become due and payable.

Any borrower, in connection with its application for financial assistance, shall include a certification that the borrower, its board of directors and principals are in compliance with the specific federal and state laws set out below. Further, the borrower shall report to DED-DE any instance in which the borrower or any member of its board of directors or principals is determined by any administrative agency or by any court in connection with any judicial proceeding to be in noncompliance with any of the specific federal or state laws set forth below. Such report shall be submitted within ten (10) working days following such determination. Failure to comply with the reporting requirement may be grounds for the loan to become due and payable or suspension or debarment of the borrower:

A. Laws and regulations related to nondiscrimination:

1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin.
2. Title VII of the Civil Rights Act of 1964 found at 42 U.S.C. §2000(e) et.seq. which prohibits discrimination on the basis of race, color, religion, national origin, or sex.
3. Title IX of the Education Amendments of 1972, as amended (U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex.
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability.
5. Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 621-634), which prohibits discrimination on the basis of age.
6. Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse.
7. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
8. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.
9. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing.
10. Chapter 213 of the Missouri Revised Statutes which prohibits discrimination on the basis of race, color, religion, national origin, sex, age, and disability.
11. The Americans with Disabilities Act (P. L. 101-336), 42 U. S. C. §12101 et seq., relating to nondiscrimination with respect to employment, public services, public accommodations and telecommunications.

12. Any other nondiscrimination provisions in the specific statute(s) and regulations under which application for federal assistance is being made.
13. The requirements of any other nondiscrimination statute(s) and regulations which may apply to the application.

B. State and Federal Environmental Laws:

1. The Federal Clean Air Act, 42 U.S.C. § 7606, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities.
2. The Federal Water Pollution Control Act, 33 U.S.C. § 1368, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities.
3. The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., as amended, particularly as it relates to the assessment of the environmental impact of federally assisted projects.
4. The National Historic Preservation Act of 1966, 16 U.S.C. § 470 et seq., as amended, relating to the preservation of historic landmarks.
5. Earthquakes - Seismic Building and Construction Ordinances, §§ 319.200 - 319.207, RSMo (Cum. Supp. 1990), relating to the adoption of seismic design and construction ordinances by certain cities, towns, villages and counties.
6. The Missouri Clean Water Law, Sections 644.006 to 644.141, RSMo.
7. The Missouri Hazardous Waste Management Law, Section, 260.350 to 260.430, RSMo.
8. The Missouri Solid Waste Management Law, Sections 260.200 to 260.245, RSMo.
9. The Missouri Air Conservation Law, Sections 643.101 to 643.190, RSMo.

C. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 and 4651 et seq., relating to acquisition of interest in real property or any displacement of persons, businesses, or farm operations.

D. The Hatch Act, 5 U.S.C. § 1501 et seq., as amended, relating to certain political activities of certain State and local employees.

E. The Archaeological and Historic Preservation Act of 1974 (Public Law 93-291) relating to potential loss or destruction of significant scientific, historical, or archaeological data in connection with federally assisted activities.

F. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

G. The flood insurance purchase requirements of § 102(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234) which requires Subgrantees in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

- H. The Privacy Act of 1974, P.L. 93-579, as amended prohibiting the maintenance of information about any individual in a manner which would violate the provision of the Act.
- I. Public Law 93-348 regarding the protection of human subjects involved in research, development and related activities supported by this award of assistance.
- J. The Laboratory Animal Welfare Act of 1966 (P. L. 89-544), 7 U.S.C. § 2131 et seq., pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- K. The following additional requirements apply to projects that involve construction:
 - 1. The Copeland (Anti-Kickback) Act, 18 U.S.C. § 874, 40 U.S.C. § 276c.
 - 2. The Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 et seq.
 - 3. Convict labor shall not be used on construction projects unless by convicts who are on work release, parole, or probation.
 - 4. The Lead-Based Paint Poisoning Prevention Act (42 U. S. C. § 4801 et seq.) which prohibits the use of lead paint in construction or rehabilitation of residence structures.
- L. Trafficking Victims Protection Act of 2000, Section 106, as amended (22 U.S.C. 7104(g) relating to termination of contract award based should any employee of the department, recipient or subrecipient violate this act.
- M. Unauthorized Aliens – Missouri Statutes – RSMo 285.525 – 285.550 Effective January 1, 2009.
 - 1. Effective January 1, 2009 and pursuant to RSMo 285.530 (1), no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.
 - 2. Any business entity receiving a loan from the state shall file an affidavit affirming that it does not employ unauthorized aliens and is enrolled in a federal work authorization program.
- N. Federal Funding Accountability and Transparency Act of 2006 (S. 2590) – Required information on federal awards be made available to the public via a single searchable website. Federal awards include grants, subgrants, loans, awards, cooperative agreements and other forms of financial assistance.
- O. Guaranteed energy cost savings contracts. The governmental unit borrower utilizing guaranteed energy cost savings contracts shall comply with section 8.231 RsMO.

P. Information on Statutory Authorization

1. Public Improvement, Recreation/Education, Bruce Watkins, RSMO. 253.220
<http://www.moga.mo.gov/statutes/C200-299/2530000220.htm>
2. Soil Conservation Research, RSMO. 278.080
<http://www.moga.mo.gov/statutes/chapters/chap278.htm>
3. Cost Share Program, RSMO. 278.080
<http://www.moga.mo.gov/statutes/chapters/chap278.htm>
4. Disbursements to Soil Districts, RSMO. 278.080, 278.120
<http://www.moga.mo.gov/statutes/chapters/chap278.htm>
5. Soil Conservation Expenditure Loans, RSMO. 278.080
<http://www.moga.mo.gov/statutes/chapters/chap278.htm>
6. Soil Conservation Demonstrations, RSMO. 278.080
<http://www.moga.mo.gov/statutes/chapters/chap278.htm>
7. Recovered Materials Market Development, RSMO. 260.335
<http://www.moga.mo.gov/statutes/C200-299/2600000335.htm>
8. Water Pollution Control Loans, RSMO. 644.122
<http://www.moga.mo.gov/statutes/C600-699/6440000122.htm>
9. Energy Set-Aside Program, RSMO. 640.665
<http://www.moga.mo.gov/statutes/c600-699/6400000665.htm>
10. Public Improvement Expenditures, MO Botanical Garden & Jefferson Landing, RSMO. 253.220
<http://www.moga.mo.gov/statutes/c200-299/2530000220.htm>
11. Storm Water Grants, RSMO. 644.031
<http://www.moga.mo.gov/statutes/c600-699/6440000031.htm>
12. Wastewater Treatment Grants, RSMO. 644.026
<http://www.moga.mo.gov/statutes/c600-699/6440000026.htm>
13. Rural Water and Sewer Grants, RSMO. 644.026
<http://www.moga.mo.gov/statutes/c600-699/6440000026.htm>
14. Outdoor Recreation Sub-Grants, RSMO. 258.083
<http://www.moga.mo.gov/statutes/c200-299/2580000083.htm>
15. Information on Statutory Authorization Energy Conservation - Schools/Hospitals, RSMO. 640.653 <http://www.moga.mo.gov/statutes/c600-699/6400000653.htm>
16. Energy Conservation - Local Governments/Non-Profit, RSMO. 640.653
<http://www.moga.mo.gov/statutes/c600-699/6400000653.htm>
17. Waste Management Grants, RSMO. 260.335
<http://www.moga.mo.gov/statutes/c200-299/2600000335.htm>
18. Environmental Grants, RSMO. 260.273-342
<http://www.moga.mo.gov/statutes/c200-299/2600000273.htm>
19. Historic Preservation Sub-Grants, RSMO. 253.408-415
<http://www.moga.mo.gov/statutes/chapters/chap253.htm>
20. Clean Air Act Grants and Sub-Grants, RSMO. 643.010-190
<http://www.moga.mo.gov/statutes/chapters/chap643.htm>

