



STEP-BY-STEP GUIDE TO COMPLYING WITH THE DAVIS BACON ACT

**FOR WEATHERIZATION ASSISTANCE PROGRAM SUBGRANTEES, THEIR CONTRACTORS
AND SUBCONTRACTORS**

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PART A – APPLIES ONLY TO WAP SUBGRANTEES

Is the project funded *directly by or assisted in whole or in part by* or through the federal government pursuant to ARRA?

NO – STOP HERE! The DBA and its requirements do not apply.

YES

Are you a local government entity that will use ONLY its own employees to do the weatherization work?

YES – STOP HERE! The DBA and its requirements do not apply.

NO – the DBA and its requirements apply – move to Part B and/or Part D

PART B – APPLIES TO WAP SUBGRANTEES THAT USE CONTRACTORS AND SUBCONTRACTORS

What does the DBA require of WAP subgrantees that use contractors and subcontractors?

#1 – OBTAIN WAGE DETERMINATION LISTING THE APPLICABLE PREVAILING WAGE RATE (PWR)

The state agency funding your WAP program should provide you with the applicable wage determination. If the stage agency does not do so, you may obtain the applicable PWR for work covered by the *new weatherization wage determinations* at http://apps1.eere.energy.gov/weatherization/dol_wage_determination.cfm.

#2 – INSERT DBA REGULATION LABOR STANDARDS AND ALL APPLICABLE WAGE DETERMINATIONS IN RFPS, BID SOLICITATIONS AND CONTRACTS

For DBA language, as modified by DOE, required to be included in contracts, see Appendix B

#3 – CONDITION ALL CONTRACTS ON ACCEPTANCE OF LABOR STANDARDS AND WAGE DETERMINATIONS INCLUDED THEREWITH

#4 – COLLECT CERTIFIED PAYROLL FORMS ON A WEEKLY BASIS

Make certain that the certified payroll form is signed by someone who has knowledge of the wages that were paid (i.e., take the proper form and ensure that it includes the proper representations and is signed by an appropriate representative)

Submit certified payroll form on a weekly basis to the state agency funding your WAP program

#5 – KEEP CERTIFIED PAYROLL FORMS AND RELATED RECORDS FOR AT LEAST 3 YEARS

DOL may seek amounts necessary to correct underpayments from the WAP subgrantees

PART C – APPLIES TO CONTRACTORS AND SUBCONTRACTORS OF WAP SUBGRANTEES

What does the DBA require of contractors and subcontractors of WAP subgrantees?

#1 – PAY PREVAILING WAGE RATE (PWR) ON A WEEKLY BASIS

Pay at least (you may pay more) the PWR for all hours worked by laborers and mechanics on Covered Project on a weekly basis. The WAP subgrantee should provide you with the applicable PWRs.

#2 – COMPENSATE FOR FRINGE RATE OR CASH VALUE OF FRINGE RATE LISTED IN WAGE DETERMINATION

May compensate for hourly fringe rate with: (1) bona fide fringe benefits; (2) cash in lieu of benefits (taxable income); (3) combination of (1) and (2); or (4) any wages paid in excess of the wage rate

Fringe rate overage may be used to offset wage rate

For further information regarding bona fide fringe benefits, see Appendix E

#3 – FILL OUT, SIGN AND SUBMIT CERTIFIED PAYROLL FORMS ON A WEEKLY BASIS

Contractor or subcontractor must submit certified payroll form to WAP subgrantee on a weekly basis

DOL provides an optional certified payroll form with instructions – Form WH 347 available at: www.dol.gov/esa/whd/forms/wh347instr.htm.

#4 – KEEP PAYROLL FORMS AND RELATED RECORDS FOR AT LEAST 3 YEARS

#5 – POST DBA RIGHTS POSTER

DBA poster is available at <http://www.dol.gov/esa/whd/regs/compliance/posters/fedprojc.pdf>.

Display poster in vehicle or work site as well as in the office to which the laborer/mechanic reports.

**#6 – IF CONTRACTORS ARE WORKING WITH SUBCONTRACTORS,
CONTRACTORS MUST INSERT LABOR STANDARDS AND ALL
APPLICABLE WAGE DETERMINATIONS IN SUBCONTRACTS**



Use PWR provided to you by the WAP subgrantee

For DBA language, as modified by DOE, required to be included in contracts, see Appendix B

Condition all subcontracts on acceptance of labor standards and wage determinations included therewith

PART D – APPLIES TO WAP SUBGRANTEES WHOSE EMPLOYEES DO WAP WORK

What does the DBA require of WAP subgrantees with employees doing WAP work?

#1 – PAY PREVAILING WAGE RATE (PWR) ON A WEEKLY BASIS

The state agency funding your WAP program should provide you with the applicable wage determination. If the state agency does not do so, you may obtain the applicable PWR for work covered by the new weatherization wage determinations at http://apps1.eere.energy.gov/weatherization/dol_wage_determination.cfm.

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APPENDIX A

State Wage Determinations with Weatherization Classifications

To locate your state's wage determination with weatherization classifications, see http://apps1.eere.energy.gov/weatherization/dol_wage_determination.cfm.

APPENDIX B

Template: FA-Special Terms and Conditions

8-20-2009 FINAL (APPROVED BY DOL)

FA-TC-0050

Prescription: Include for ARRA Awards when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT ("RECOVERY ACT") Clauses are required.

CLAUSE XX. DAVIS BACON ACT REQUIREMENTS

A. Definitions. For purposes of this Clause, Clause XX, Contract Work Hours and Safety Standards Act, and Clause XX, Recipient Functions, the following definitions are applicable:

(1) *Award* means the Award by the Department of Energy (DOE) to a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Subrecipients, Contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act.

(2) *"Construction, alteration or repair"* means all types of work done by laborers and mechanics employed by the Subrecipient, construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(a) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(b) Painting and decorating; or

(c) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.

(3) *Contract* means a written procurement contract executed by a Subrecipient for the acquisition of property and services for construction, alteration, and repair under a Subaward. For purposes of these Clauses, a Contract shall include subcontracts and lower-tier subcontracts under the Contract.

(4) *Contracting Officer* means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) *Contractor* means an entity that enters into a Contract. For purposes of these Clauses, Contractor shall include subcontractors and lower-tier subcontractors.

(6) *Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant directly from the Federal Government. The term includes the State that

receives an Award from DOE and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(7) "*Site of the work*"—

(a) Means--

(i) The physical place or places where the construction called for in the Award, Subaward, or Contract will remain when work on it is completed; and

(ii) Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the project;

(b) Except as provided in paragraph (c) of this definition, the site of the work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(1) They are dedicated exclusively, or nearly so, to performance of the project; and

(2) They are adjacent or virtually adjacent to the site of the work as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition; and

(c) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or Federal Award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of an Award, Subaward, or Contract.

(8) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower- tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(9) *Subrecipient* means a non-Federal entity that expends Federal awards received from a pass-through entity [Recipient] to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. The term includes a Community Action Agency (CAA), local agency, or other entity to which a Subaward under the Award is made by a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the DBA work performed by all laborers and mechanics employed by

contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant of the Recovery Act.

B. Davis-Bacon Act

(1)(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached to the Subaward or Contract and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Recipient, a Subrecipient, or Contractor and such laborers and mechanics.

(i) Applicable to Recipient Only: Prior to the issuance of the Subaward or Contract, the Recipient shall notify the Contracting Officer of the site of the work in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(ii) If the Subaward or Contract is or has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph B(4) below; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(c) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the paragraph entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(d) The wage determination (including any additional classifications and wage rates conformed under paragraph B(2) of this Clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and Contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(a) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Subaward or

Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
- (ii) The classification is utilized in the area by the construction industry.
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Subrecipient (and Contractor, when applicable) and the laborers and mechanics to be employed in the classification (if known), or their representatives agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of this agreement. If the Contracting Officer agrees with the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(c) In the event the Subrecipient (and Contractor, when applicable), and the laborers or mechanics to be employed in the classification, or their representatives, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of the disagreement. The Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs B(2)(b) or B(2)(c) of this Clause shall be paid to all workers performing work in the classification under the Award, Subaward, or Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Award, Subaward, or Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient and Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Subrecipient or Contractor does not make payments to a trustee or other third person, the Subrecipient or Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Subrecipient or Contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient or Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

C. Rates of Wages

(1) The minimum wages to be paid laborers and mechanics under the Subaward or Contract involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to the Award, Subaward, or Contract.

(2) If the Subaward or Contract has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

D. Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the Recipient, Subrecipient and Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (4) of the provision entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Subrecipient or Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Subrecipient or Contractor employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and

certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2)(a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Subrecipient. The Subrecipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Recipient. The Recipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph D(1) of this Clause, except that the full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(b) The Recipient is responsible for the ensuring that all Subrecipients and Contractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this Clause. The Subrecipient is responsible for ensuring all Contractors, including lower tier subcontractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this clause. Subrecipients and Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request for transmission to the Contracting Officer, the Recipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The Recipient shall also obtain and provide the full social security number and current address of each covered worker upon request by the Contracting Officer or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Recipient to require a Subrecipient or Contractor to provide addresses and social security numbers to the Recipient for its own records, without weekly submission to the Contracting Officer.

(c) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Recipient, Subrecipient or Contractor or his or her agent who pays or supervises the payment of the persons employed under the Subaward or Contract and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph D(2)(a) of this Clause, the appropriate information is being maintained under paragraph D(1) of this Clause, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Subaward or Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Subaward or Contract.

(d) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph D(2)(c) of this Clause.

(e) The falsification of any of the certifications in Paragraph D, Payrolls and Basic Records, of this Clause may subject the Recipient, Subrecipient or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Recipient, Subrecipient, or Contractor shall make the records required under paragraph D(1) of this Clause available for inspection, copying, or transcription by the Contracting Officer, authorized representatives of the Contracting Officer, or the Department of Labor. The Subrecipient or Contractor shall permit the Contracting Officer, authorized representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Recipient, Subrecipient, or Contractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Recipient, Subrecipient, or Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

E. Withholding of Funds

(1) The DOE Contracting Officer shall, upon his or her or its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Recipient or any other contract or Federal Award with the same Recipient, on this or any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Recipient so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or a Contractor the full amount of wages required by the Award or Subaward or a Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Award or Subaward or a Contract, the Contracting Officer may, after written notice to the Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from any Subrecipient or Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or Contractor the full amount of wages required by the Subaward or Contract. In the event of failure to pay any laborer or mechanic,

including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Subaward or Contract, the Recipient may, after written notice to the Subrecipient or Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased or the Government may cause the suspension of any further payment under any other contract or Federal award with the same Subrecipient or Contractor, on any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Subrecipient or Contractor.

F. Apprentices and Trainees

(1) Apprentices.

(a) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(b) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subrecipient or Contractor as to the entire work force under the registered program.

(c) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph F(1) of this Clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(d) Where a Subrecipient or Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subrecipient's or Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(e) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits,

apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(f) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Subrecipient or Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees.

(a) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(b) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship/training program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(c) In the event OATELS withdraws approval of a training program, the Subrecipient or Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this Clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

G. Compliance with Copeland Act Requirements

The Recipient, Subrecipient or Contractor shall comply with the requirements of 29 CFR Part 3 which are hereby incorporated by reference in the Award, Subaward or Contract.

H. Subawards and Contracts

(1) The Recipient, the Subrecipient and Contractor shall insert in the Subaward or any Contracts this Clause entitled "Davis Bacon Act Requirements" and such other clauses as the Contracting Officer may require. The Recipient shall be responsible for ensuring compliance by any Subrecipient or Contractor with all of the requirements contained in this Clause. The Subrecipient shall be responsible for the compliance by Contractor with all of the requirements contained in this Clause.

(2) Within 14 days after issuance of a Subaward, the Recipient shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Subaward and Contract for construction within the United States, including the Subrecipient's and Contractor's signed and dated acknowledgment that this Clause) has been included in the Subaward and any Contracts. The SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf) . Within 14 days after issuance of a Contract or lower- tier subcontract, the Subrecipient shall deliver to the Recipient a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Contract and lower-tier subcontract for construction within the United States, including the Contractor and lower- tier subcontractor's signed and dated acknowledgment that this Clause has been included in any Contract and lower- tier subcontracts. SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf) . The Recipient shall immediately provide to the DOE Contracting Officer the completed Standard Forms (SF) 1413.

I. Contract Termination -- Debarment

A breach of these provisions may be grounds for termination of the Award, Subaward, or Contract and for debarment as a Contractor or subcontractor as provided in 29 CFR 5.12.

J. Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in the Award, Subaward or Contract.

K. Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and shall not be subject to any other dispute provision that may be contained in the Award, Subaward, and Contract. Disputes within the meaning of this Clause include disputes between the Recipient, Subrecipient (including any Contractor) and the Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

L. Certification of Eligibility.

(1) By entering into this Award, Subaward, or Contract (as applicable), the Recipient, Subrecipient, or Contractor, respectively certifies that neither it (nor he or she) nor any person or firm who has an interest in the Recipient, Subrecipient, or Contractor's firm, is a person, entity, or firm ineligible

to be awarded Government contracts or Government awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this Award, Subaward or Contract shall be subcontracted to any person or firm ineligible for award of a Government contract or Government award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

M. Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under an Award, Subaward or Contract must be submitted for approval in writing by the head of the federal contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the Award, Subaward or Contract. Any amount paid by the Subrecipient or Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Subrecipient or Contractor and shall not be reimbursed by the Recipient or Subrecipient. If the Government refuses to authorize the use of the overtime, the Subrecipient or Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

Clause XXX. Contract Work Hours and Safety Standards Act

This Clause entitled "Contract Work Hours and Safety Standards Act (CWHSSA)" shall apply to any Subaward or Contract in an amount in excess of \$100,000. As used in this CWHSSA Clause, the terms laborers and mechanics include watchmen and guards.

A. Overtime requirements. No Subrecipient or Contractor contracting for any part of the Subaward work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph B herein, the Subrecipient or Contractor responsible therefor shall be liable for the unpaid wages. In addition, such Subrecipient or Contractor shall be liable to the United States (in the case of work done under a Subaward or Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provision set forth in CWHSSA paragraph A, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

C. Withholding for unpaid wages and liquidated damages.

(1) The DOE Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Recipient on this or any other Federal Award or Federal contract with the same Recipient on any other federally-assisted Award or contract subject to the CWHSSA, which is held by the same Recipient such sums as may be determined to be necessary to satisfy any liabilities of such Recipient for unpaid wages and liquidated damages as provided in the clause set forth in CWHSSA, paragraph B of this Clause.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause from any moneys payable on account of work performed by the Subrecipient or Contractor on this or any other federally assisted subaward or contract subject to the CWHSSA, which is held by the same Subrecipient or Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Subrecipient or Contractor for unpaid wages and liquidated damages as provided in clause set forth in CWHSSA, paragraph B of this Clause.

D. Subcontracts. The Subrecipient shall insert in a Contract and a Contractor shall insert in any lower tier subcontracts, the clauses set forth in these CWHSSA paragraphs (A) through (D) and also a provision requiring the Contractors to include this CWHSSA Clause in any lower tier subcontracts. The Recipient shall be responsible for compliance by any Subrecipient or Contractor, with the CWHSSA paragraphs A through D. The Subrecipient shall be responsible for compliance by any Contractor (including lower- tier subcontractors).

E. The Subrecipient or Contractor shall maintain payrolls and basic payrolls in accordance with Clause XX, Davis- Bacon Act Requirements, for all laborers and mechanics, including guards and watchmen working on the Subaward or Contracts. These records are subject to the requirements set forth in Clause XX, Davis Bacon Requirements.

Clause XXXX. RECIPIENT FUNCTIONS

(1) On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:

- (a) Obtain, maintain, and monitor all DBA certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
- (b) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
- (c) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (b) above;

- (d) Address any Subrecipient and any Contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
 - (e) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
 - (f) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
 - (g) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
 - (h) Provide copies of all records upon request by DOE or DOL in a timely manner.
- (2) All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.
- (3) In the event of, and in response to any Freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.

APPENDIX C

U.S. Department of Labor

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)

Employment Standards Administration
Wage and Hour Division

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Rev. Dec. 2008

OMB No.: 1215-0149
Expires: 12/31/2011

NAME OF CONTRACTOR OR SUBCONTRACTOR

ADDRESS

PAYROLL NO.

FOR WEEK ENDING

PROJECT AND LOCATION

PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS				(9) NET WAGES PAID FOR WEEK				
														FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS					

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210



UNITED STATES DEPARTMENT OF LABOR
Employment Standards Administration

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Instructions For Completing Payroll Form, WH-347

- [WH-347](#) (PDF)
 OMB Control No. 1215-0149, Expires 12/31/2011.
 Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

General: Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Payroll No.: Beginning with the number "1", list the payroll number for the submission.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Project or Contract No.: Self-explanatory.

Column 1 - Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 - No. of Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown or hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

Column 4 - Hours worked: List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay (Including Fringe Benefits): In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds \$100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "\$163.00/\$420.00" would reflect the earnings of a worker who earned \$163.00 on a Federally assisted construction project during a week in which \$420.00 was earned on all work.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have

knowledge of the facts represented as true.

Items 1 and 2: Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits: If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

Contractors who pay no fringe benefits: If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4 (b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

Public Burden Statement: We estimate that it will take an average of 55 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Note: In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at www.adobe.com/products/acrobat/readstep2.html. To save the completed forms on your workstation, you need to use the "Save As" method to save the file. For example, move your mouse cursor over the PDF link and click on your "RIGHT" mouse button. This will cause a menu to be displayed, from which you will select the proper save option -- depending upon which browser you are using:

- For Microsoft IE users, select "Save Target As"
- For Netscape Navigator users, select "Save Link As"

Once you've selected the proper save option for your browser, and have saved the file to a

location you specified, go to your program menu and start the Adobe Acrobat® Reader. Once open, locate the PDF file you saved and open it directly in Acrobat®.



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>

Instructions for the Addendum to Form WH 347

CAPLAW has recently revised the addendum it created to the Form WH 347 that is included in this Appendix C. By using this addendum, contractors and subcontractors working for multiple WAP subgrantees in multiple counties will only need to fill out one Form WH 347 as long as they also fill out the attached addendum.

The two samples in Appendix D show how the forms and addendums would look once completed for multiple counties and multiple subgrantees.

APPENDIX D

SAMPLE ONE INSTRUCTIONS

U.S. Department of Labor (DOL) Certified Payroll Forms, WH-347

This payroll form addresses the following fact pattern:

- Owner individually performs some Davis-Bacon Act (DBA) laborer or mechanic work and has two employees working for him.
 - Bona fide owners who are exempt pursuant to DOL Fair Labor Standard Act (FLSA) regulations, found at 29 CFR Part 541.101, are not laborers and mechanics and are not subject to the DBA. For an owner to be considered exempt under the FLSA regulations and therefore not subject to the DBA, the owner must own at least a bona fide 20 % equity interest in the enterprise and be actively engaged in its management. Generally, "management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.
 - The U.S. Department of Energy (DOE) recommends that owners of a business who also perform construction work list themselves on the certified payroll and under the column for "Work Classification" insert the word "owner."
 - See Davis-Bacon Act Compliance: Questions and Answers for the DOE Weatherization Assistance Program (WAP), Davis Bacon and weekly payroll section at http://apps1.eere.energy.gov/weatherization/davis_bacon_faqs.cfm#payroll and FLSA regulation, 29 CFR 541.101 and 541.102 at http://www.dol.gov/DOL/allcfr/ESA/Title_29/Part_541/Subpart_B.htm.
- One of the employees, Ralph Brown, only performed DBA work and worked overtime. The other employee, Jim Dodge, performed both DBA work and non-DBA work but did not work any overtime.
- DBA work is performed in two different counties for different community action agencies by the same contractor.
- The contractor pays (and has always paid) \$16.00 an hour to all employees, a wage rate that is slightly higher than the highest prevailing wage rate of the two counties in which DBA work is performed.
- The contractor's wage rate covers the DBA fringe rate in cash.
- The prevailing wage rates are taken from the weatherization wage determinations created by the U.S. Department of Energy (DOE) which are available at http://apps1.eere.energy.gov/weatherization/dol_wage_determination.cfm.

DOL Prevailing Wage Rates	
Counties	Weatherization Worker
Barnstable	\$13.00 + 1.80
Plymouth	\$14.39 + 1.22

- The addendum shows the exact location where DBA weatherization work is completed in each county and the worker who performed the DBA weatherization work at that location.

CAPLAW SAMPLE ONE

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)



Rev. Dec. 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

OMB No.: 1215-0149
Expires: 12/31/2011

NAME OF CONTRACTOR OR SUBCONTRACTOR ADDRESS **18 Tremont Street
Bourne, MA 02532**

Jack Smith DBA Energy Savers Contractors

PAYROLL NO. **2** FOR WEEK ENDING **09/18/2009** PROJECT AND LOCATION **DOE ARRA WAP; Barnstable County, Plymouth County** PROJECT OR CONTRACT NO. **DOE ARRA WAP**

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK			
				Sun	Mon	Tues	Wed	Thurs	Fri	Sat				FICA	WITH- HOLDING TAX	Health	OTHER	TOTAL DEDUCTIONS				
				13	14	15	16	17	18	19				HOURS WORKED EACH DAY								
Jack Smith- 1782	1	Owner	O																			
Ralph Brown- 1345 Barnstable County	1	Weatherization Worker	O			1.00		2.00			3.00	\$24.00	\$712.00					\$20.00	\$30.00	\$40.00	\$90.00	\$622.00
Jim Dodge- 1289 Plymouth County	1	Weatherization 1 Worker	O										\$512.00					\$20.00	\$30.00	\$40.00	\$90.00	\$510.00
	1		P										\$600.00									
	1		S																			

To determine if you are an "owner" as defined by DBA see Sample One Instructions

Overtime

Straight time

DBA Hours Only

Actual hourly rate of pay

Hourly rate of cash paid in lieu of benefits

DBA pay including overtime

TOTAL paycheck for that week including overtime

All deductions must be listed

TOTAL paycheck minus deductions

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date 09/23/2009

I, Sam Harrison Payroll Coordinator
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

Jack Smith DBA Energy Savers Contractors on the
(Contractor or Subcontractor)

DOE ARRA WAP Work; that during the payroll period commencing on the
(Building or Work)

14 day of 9, 2009, and ending the 18 day of 9, 2009,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

Jack Smith DBA Energy Savers Contractors from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

See deductions column in payroll form.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE <u>Sam Harrison, Payroll Coordinator</u>	SIGNATURE
--	-----------

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Addendum to Certified Payroll Form WH-347

*Only include time spent on work funded by the American Recovery and Reinvestment Act of 2009 for which Davis-Bacon Act (DBA) prevailing wages are paid.

DATE	WORK SITE ADDRESS	WAP AGENCY	EMPLOYEE NAME & ID#	DBA* HOURS WORKED	EMPLOYEE NAME & ID#	DBA* HOURS WORKED
9/14/2009	145 Cherry Lane; Bourne	CAA	Ralph Brown, 1345	8		
9/14/2009	237 Magnolia Lane; Bridgewater	CAA	Jim Dodge, 1289	7		
9/15/2009	129 Lewis Lane; Wareham	CAA	Ralph Brown, 1345	9		
9/15/2009	83 Wagon Road; Brockton	CAA	Jim Dodge, 1289	5		
9/16/2009	128 Tremont Street; Sandwich	CAA	Ralph Brown, 1345	8		
9/16/2009	83 Wagon Road; Brockton	CAA	Jim Dodge, 1289	8		
9/17/2009	17 Jolly Drive; Carver	CAA	Ralph Brown, 1345	10		
9/17/2009	22 Oak Drive; Abbingdon	CAA	Jim Dodge, 1289	8		

SAMPLE TWO INSTRUCTIONS

U.S. Department of Labor (DOL) Certified Payroll Forms, WH-347

This payroll form addresses the following fact pattern:

- Owner individually performs some Davis-Bacon Act (DBA) laborer/mechanic work and has two employees working for him.
 - Bona fide owners who are exempt pursuant to DOL Fair Labor Standard Act (FLSA) regulations, found at 29 CFR Part 541.101, are not laborers and mechanics and are not subject to the DBA. For an owner to be considered exempt under the FLSA regulations and therefore not subject to the DBA, the owner must own at least a bona fide 20 % equity interest in the enterprise and be actively engaged in its management. Generally, “management” includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.
 - The U.S. Department of Energy (DOE) recommends that owners of a business who also perform construction work list themselves on the certified payroll and under the column for "Work Classification" insert the word "owner."
 - See Davis-Bacon Act Compliance: Questions and Answers for the DOE Weatherization Assistance Program (WAP), Davis Bacon and weekly payroll section at http://apps1.eere.energy.gov/weatherization/davis_bacon_faqs.cfm#payroll and FLSA regulation, 29 CFR 541.101 and 541.102 at http://www.dol.gov/DOL/allcfr/ESA/Title_29/Part_541/Subpart_B.htm.
- DBA work is performed in two different counties for different community action agencies by the same contractor.
- Both workers have performed both DBA and non-DBA work but neither one has worked any overtime.
- Contractor is paying the prevailing wage rate for each county in which DBA work is performed. The rates for the counties addressed in this sample are listed below. These rates are taken from the weatherization wage determinations created by the DOE which are available at http://apps1.eere.energy.gov/weatherization/dol_wage_determination.cfm.

DOL Prevailing Wage Rates		
Counties	Weatherization Worker	Doors & Windows Weatherization Worker
Barnstable	\$13.00 + 1.80	\$17.50 + 1.15
Plymouth	\$14.39 + 1.22	\$19.46 + 2.32

- One of the employees, Ralph Brown, is performing work under two classifications, a “Weatherization Worker” and a “Doors and Windows Weatherization Worker.”
- The actual hourly rate of pay does not cover the additional required DBA fringe benefits.
- The contractor is covering the DBA fringe rate using both cash paid to workers in lieu of the DBA fringe rate and actual fringe benefits paid to workers pursuant to approved plans, funds or programs. For an explanation of an approved plan, fund or program, see CAPLAW’s Fringe Benefit Q&A available at <http://www.caplaw.org/DavisBacon/FINAL%20APPENDICIES/Appendix%20E%20--%20Fringe%20Benefit%20Q&A%20and%20Permitted%20Deductions.pdf>.

- The addendum shows the exact location where DBA weatherization work is completed in each county and the worker who performed the DBA weatherization work at that location.

CAPLAW SAMPLE TWO

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)



Rev. Dec. 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

OMB No.: 1215-0149
Expires: 12/31/2011

NAME OF CONTRACTOR Jack Smith DBA Energy Savers Contractors	OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS 18 Tremont Street Bourne, MA 02532
---	---	--

PAYROLL NO. 2	FOR WEEK ENDING 09/18/2009	PROJECT AND LOCATION DOE ARRA WAP; Barnstable County; Plymouth County	PROJECT OR CONTRACT NO. DOE ARRA WAP
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(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK	
				Sun	Mon	Tues	Wed	Thurs	Fri	Sat				FICA	WITH-HOLDING TAX	Health	OTHER	TOTAL DEDUCTIONS		
				13	14	15	16	17	18	19				HOURS WORKED EACH DAY						
Jack Smith- 1782	1	Owner	O										\$210.00							
			S																	
Ralph Brown- 1345 Barnstable County	1	Weatherization Worker	O										\$650.00							
			S	0.00	4.00	0.00	4.00	0.00	7.00	0.00	15.00	\$13.00			\$20.00	\$40.00	\$50.00			\$110.00
Ralph Brown- 1345 Barnstable County	1	Door and Window Weatherization Worker	O										\$267.75							
			S	0.00	0.00	7.00	0.00	8.00	0.00	0.00	15.00	\$17.50								
Jim Dodge- 1289 Barnstable County	1	Weatherization Worker	O										\$575.00							
			S	0.00	7.00	0.00	8.00	0.00	4.00	0.00	19.00	\$13.00			\$10.00	\$30.00	\$30.00			\$70.00
Jim Dodge- 1289 Plymouth County	1	Weatherization Worker	O										\$192.53							
			S	0.00	0.00	5.00	0.00	8.00	0.00	0.00	13.00	\$14.39								

To determine if you are an "owner" as defined by DBA see Sample Two Instructions

Overtime

Straight time

DBA Hours Only

Actual hourly rate of pay

Hourly rate of cash paid in lieu of benefits

DBA pay including overtime, if any

TOTAL paycheck for that week including overtime, if any

TOTAL paycheck minus deductions

All deductions must be listed

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Fill in as seen here if covering the DBA fringe rate using both a cash equivalent and a fringe benefit equivalent.

Date 09/23/2009

I, Sam Harrison Payroll Coordinator
 (Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by
Jack Smith DBA Energy Savers Contractors on the
 (Contractor or Subcontractor)

DOE ARRA WAP Work; that during the payroll period commencing on the
 (Building or Work)
14 day of 9, 2009, and ending the 18 day of 9, 2009,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

Jack Smith DBA Energy Savers Contractors from the full
 (Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

See deductions column in payroll form.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:
 (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

Check if either (1) covering all of the DBA fringe rate with fringe benefits paid on behalf of worker to an approved fund, plan or program OR (2) if, as in this sample, covering the DBA fringe rate using both fringe benefits paid on behalf of worker to an approved fund, plan or program AND cash paid to worker in lieu of.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Ralph Brown fringe benefits as Weatherization Worker for 9/14, 9/16 and 9/18	Cash in lieu \$1.00; benefits equal \$0.80
Ralph Brown fringe benefits as D&W Weatherization Worker for 9/15, 9/17	Cash in lieu \$0.35; benefits equal \$0.80
Jim Dodge fringe benefits as Weatherization Worker for 9/14, 9/16 and 9/18	Cash in lieu \$1.00; benefits equal \$0.80
Jim Dodge fringe benefits as Weatherization Worker for 9/15, 9/17	Cash in lieu \$0.42; benefits equal \$0.80

REMARKS:

NAME AND TITLE <u>Sam Harrison, Payroll Coordinator</u>	SIGNATURE
--	-----------

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Addendum to Certified Payroll Form WH-347

*Only include time spent on work funded by the American Recovery and Reinvestment Act of 2009 for which Davis-Bacon Act (DBA) prevailing wages are paid.

DATE	WORK SITE ADDRESS	WAP AGENCY	EMPLOYEE NAME & ID#	DBA* HOURS WORKED	EMPLOYEE NAME & ID#	DBA* HOURS WORKED
9/14/2009	145 Cherry Lane; Bourne	CAA	Ralph Brown, 1345	4		
			Jim Dodge, 1289	7		
9/15/2009	145 Cherry Lane; Bourne	CAA	Ralph Brown, 1345	7		
9/15/2009	129 Lewis Lane; Wareham	CAA	Jim Dodge, 1289	5		
9/16/2009	128 Tremont Street; Sandwich	CAA	Ralph Brown, 1345	4		
			Jim Dodge, 1289	8		
9/17/2009	128 Tremont Street; Sandwich	CAA	Ralph Brown, 1345	8		
9/17/2009	17 Jolly Drive; Carver	CAA	Jim Dodge, 1289	8		
9/18/2009	154 Dogwood Drive; Bourne	CAA	Ralph Brown, 1345	7		
			Jim Dodge, 1289	4		

SAMPLE THREE INSTRUCTIONS

U.S. Department of Labor (DOL) Certified Payroll Forms, WH-347

This payroll form addresses the following fact pattern:

- DBA work is performed in two different counties for different community action agencies by the same contractor.
- Contractor is paying the prevailing wage rate for each county in which DBA work is performed. The rates for the counties addressed in this sample are listed below. These rates are taken from the weatherization wage determinations created by the DOE which are available at http://apps1.eere.energy.gov/weatherization/dol_wage_determination.cfm.

DOL Prevailing Wage Rates		
Counties	Weatherization Worker	Doors & Windows Weatherization Worker
Barnstable	\$13.00 + 1.80	\$17.50 + 1.15
Plymouth	\$14.39 + 1.22	\$19.46 + 2.32

- The actual hourly rate of pay does not cover the additional required DBA fringe benefits.
- The contractor is covering the DBA fringe rate using both cash paid to workers in lieu of the DBA fringe rate and actual fringe benefits paid to workers pursuant to approved plans, funds or programs. For an explanation of an approved plan, fund or program, see CAPLAW’s Fringe Benefit Q&A available at <http://www.capl原因.org/DavisBacon/FINAL%20APPENDICIES/Appendix%20E%20--%20Fringe%20Benefit%20Q&A%20and%20Permitted%20Deductions.pdf>.
- Ralph Brown worked a total of 45 DBA hours. As a result, he has worked 5 overtime hours pursuant to the Contract Work Hours and Safety Standards Act (CWHSSA) and must receive time and a half. Ralph’s rate of pay, excluding the overtime rate of pay, for the time he worked is:

Type of Work	Rate of Pay	Hours Worked
DBA weatherization work in Barnstable county	\$13.00	40 hrs

Overtime rate of pay is determined pursuant to the Fair Labor Standard Act (FLSA) regulations and equals time and a half. For DBA hours worked, the fringe rate is included in the overtime rate by not in the calculation of the ½ as shown here:

Type of Work	Hourly Rate of Pay	½ of Regular Rate	Overtime Hourly Rate of Pay
DBA weatherization work in Barnstable County	\$13.00	+ (\$13.00 X ½) =	\$19.50

- The Gross Amount Earned including overtime should be calculated as shown here:

Total Hours Worked including Overtime	Prevailing Wage Rate (includes the DBA fringe rate paid in cash because the DBA fringe rate must be paid for the regular overtime hours – see note below)	Total Pay at Standard Rate (including cash in lieu) for all hours worked	½ of Regular Rate X Overtime Hours	Gross Amount Earned
45 hours X	(\$13.00 + 1.00) =	\$630.00 +	(\$13.00 X ½ X 5) =	\$662.50

Note: As mentioned above, the DBA requires that fringes be paid for all time worked. However, the fringe rate is not included in the calculation of the regular rate/overtime premium.

Note: The “regular rate” for overtime calculations must always be equal to or more than the DBA wage rate. Thus, if the contractor’s wage rate is \$12.00 an hour and he is meeting the DBA wage rate for Barnstable County with excess fringe benefits equal to \$2.80 per hour, then, when calculating the overtime pay rate and premium, the contractor must use the DBA wage rate of \$13.00 an hour, rather than the \$12.00 which he pays in cash.

- The addendum shows the exact location where DBA weatherization work is completed in each county and the worker who performed the DBA weatherization work at that location.

CAPLAW SAMPLE THREE

PAYROLL

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)



Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rev. Dec. 2008

NAME OF CONTRACTOR OR SUBCONTRACTOR Jack Smith DBA Energy Savers Contractors	ADDRESS 18 Tremont Street Bourne, MA 02532	OMB No.: 1215-0149 Expires: 12/31/2011
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PAYROLL NO. 2	FOR WEEK ENDING 09/18/2009	PROJECT AND LOCATION DOE ARRA WAP; Barnstable County; Plymouth County	PROJECT OR CONTRACT NO. DOE ARRA WAP
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(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK	
				Sun	Mon	Tues	weds	Thurs	Fri	Sat				FICA	WITH- HOLDING TAX	HEALTH	OTHER	TOTAL DEDUCTIONS		
				13	14	15	16	17	18	19										
Ralph Brown- 1345 Barnstable County	1	Weatherization Worker	O			3.00		2.00				5.00	\$19.50	\$662.50						
			S		8.00	8.00	8.00	8.00	8.00			40.00	\$13.00	1.00	\$20.00	\$40.00	\$50.00			\$110.00
Jim Dodge- 1289 Plymouth County	1	Weatherization Worker	O										\$592.40							
			S		8.00	8.00	8.00	8.00	8.00			40.00	\$14.81	0.42	\$10.00	\$30.00	\$30.00			\$70.00
			O										\$592.40							
			S																	
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	

See Instructions for how to calculate overtime rate of pay

All deductions must be listed

DBA hours only

Actual rate of pay

Hourly rate of cash pay in lieu of benefits

DBA pay including overtime, if any

Total paycheck for that week including overtime

Total paycheck minus deductions

Overtime

Straighttime

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date 09/23/2009

I, Sam Harrison Payroll Coordinator
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

Jack Smith DBA Energy Savers Contractors on the
(Contractor or Subcontractor)

DOE ARRA WAP Work; that during the payroll period commencing on the
(Building or Work)

14 day of 9, 2009, and ending the 18 day of 9, 2009,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

Jack Smith DBA Energy Savers Contractors from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

See deductions column in payroll form.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

Check if either (1) covering all of the DBA fringe rate with a fringe benefit equivalent paid to an approved fund, plan or program OR (2) if, as in this sample, covering the DBA fringe rate using both a fringe benefit equivalent paid to an approved fund, plan or program AND cash in lieu of the DBA fringe rate.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Ralph Brown fringe benefits as weatherization worker for 9/14-9/18	Cash in lieu \$1.00; benefits equivalent \$0.80
Jim Dodge fringe benefits as weatherization worker for 9/14-9/18	Cash in lieu \$.42; benefits equivalent \$0.80

REMARKS:

NAME AND TITLE <u>Sam Harrison, Payroll Coordinator</u>	SIGNATURE
--	-----------

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Addendum to Certified Payroll Form WH-347

*Only include time spent on work funded by the American Recovery and Reinvestment Act of 2009 for which Davis-Bacon Act (DBA) prevailing wages are paid.

DATE	WORK SITE ADDRESS	WAP AGENCY	EMPLOYEE NAME & ID#	DBA* HOURS WORKED	EMPLOYEE NAME & ID#	DBA* HOURS WORKED
9/14/2009	145 Cherry Lane; Bourne	CAA	Ralph Brown, 1345	8		
9/14/2009	129 Lewis Lane; Wareham	CAA	Jim Dodge, 1289	8		
9/15/2009	145 Cherry Lane; Bourne	CAA	Ralph Brown, 1345	11		
9/15/2009	129 Lewis Lane; Wareham	CAA	Jim Dodge, 1289	8		
9/16/2009	128 Tremont Street; Sandwich	CAA	Ralph Brown, 1345	8		
9/16/2009	25 Boone Trail; Wareham	CAA	Jim Dodge, 1289	8		
9/17/2009	128 Tremont Street; Sandwich	CAA	Ralph Brown, 1345	10		
9/17/2009	17 Jolly Drive; Carver	CAA	Jim Dodge, 1289	8		

Addendum to Certified Payroll Form WH-347

*Only include time spent on work funded by the American Recovery and Reinvestment Act of 2009 for which Davis-Bacon Act (DBA) prevailing wages are paid.

DATE	WORK SITE ADDRESS	WAP AGENCY	EMPLOYEE NAME & ID#	DBA* HOURS WORKED	EMPLOYEE NAME & ID#	DBA* HOURS WORKED
9/18/2009	154 Dogwood Drive; Bourne	CAA	Ralph Brown, 1345 ----- ----- -----	8		
9/18/2009	17 Jolly Drive; Carver	CAA	Jim Dodge, 1289 ----- ----- -----	8		
			----- ----- -----			
			----- ----- -----			
			----- ----- -----			
			----- ----- -----			
			----- ----- -----			
			----- ----- -----			

SAMPLE FOUR INSTRUCTIONS

U.S. Department of Labor (DOL) Certified Payroll Forms, WH-347

This payroll form addresses the following fact pattern:

- DBA work is performed in two different counties for different community action agencies by the same contractor.
- Contractor is paying the prevailing wage rate for each county in which DBA work is performed. The rates for the counties addressed in this sample are listed below. These rates are taken from the weatherization wage determinations created by the DOE which are available at http://apps1.eere.energy.gov/weatherization/dol_wage_determination.cfm.

DOL Prevailing Wage Rates		
Counties	Weatherization Worker	Doors & Windows Weatherization Worker
Barnstable	\$13.00 + 1.80	\$17.50 + 1.15
Plymouth	\$14.39 + 1.22	\$19.46 + 2.32

Contractor is paying \$12.00 per hour for all non-DBA work.

- One of the employees, Ralph Brown, is performing work under two classifications, a “Weatherization Worker” and a “Doors and Windows Weatherization Worker.”
- The actual hourly rate of pay does not cover the additional required DBA fringe benefits.
- The contractor is covering the DBA fringe rate using both cash paid to workers in lieu of the DBA fringe rate and actual fringe benefits paid to workers pursuant to approved plans, funds or programs. For an explanation of an approved plan, fund or program, see CAPLAW’s Fringe Benefit Q&A available at <http://www.caplaw.org/DavisBacon/FINAL%20APPENDICIES/Appendix%20E%20--%20Fringe%20Benefit%20Q&A%20and%20Permitted%20Deductions.pdf>.
- Ralph Brown worked a total of 50 hours: 30 DBA hours + 20 non-DBA hours. As a result, he has worked 10 overtime hours. Ralph’s rate of pay, excluding overtime, for the time he worked is:

Type of Work	Rate of Pay	Hours Worked
DBA weatherization work in Barnstable County	\$13.00	15 hrs
DBA doors and windows weatherization work in Barnstable County	\$17.50	15 hrs
Non-DBA work	\$12.00	20 hrs

Overtime rate of pay is determined pursuant to the Fair Labor Standard Act (FLSA) regulations and equals time and a half. The overtime rate of pay is calculated by (1) multiplying the hourly rate of pay by the hours worked at that rate to obtain the total rate of pay; (2) adding the total rate of pay for each set of hours worked to calculate the gross amount earned excluding overtime; (3) dividing the gross amount earned by the total number of hours worked; and (4) multiplying the rate of pay by ½ and adding that ½ to the rate of pay, as shown here:

Type of Work	Hourly Rate of Pay	Hours Worked	Total Rate of Pay
DBA weatherization work in Barnstable County	\$13.00	X 15 hrs =	\$195.00
DBA doors and windows weatherization work in Barnstable County	\$17.50	X 15 hrs =	\$262.50
Non-DBA work	\$12.00	X 20 hrs =	\$240.00
Total Earned Per Regular Rate of Pay			\$697.50

Total Earned Per Regular Rate of Pay	Total Hours Worked	Overtime Hourly Rate of Pay without the ½
\$697.50 ÷	50 =	\$13.95

The ½ for overtime purposes is calculated as follows:

Hourly Rate of Pay		½
\$13.95 X	1/2 =	\$6.98

The overtime hourly rate of pay would be \$13.95 + \$6.98 which equals **\$20.93** and the overtime premium would be 10 hrs X \$20.93 = **\$209.30**.

Thus, in column 6, Rate of Pay, the upper half would be the overtime hourly rate of pay of \$20.93. In column 7, Gross Amount Earned including Overtime, would be calculated as follows:

Total Earned Per Regular Rate of Pay	Overtime ½ X Overtime Hours	Gross Amount Earned including Overtime
\$697.50 +	(\$6.98 X 10) =	\$767.30

- Jim Dodge worked a total of 45 hours: 32 DBA hours and 13 non-DBA hours. As a result, he has worked 5 overtime hours. Jim’s rate of pay, excluding overtime, for the time he worked is:

Type of Work	Rate of Pay	Hours Worked
DBA weatherization work in Barnstable County	\$13.00	19 hrs
DBA weatherization work in Plymouth County	\$14.39	13 hrs
Non-DBA work	\$12.00	13 hrs

Overtime rate of pay is determined pursuant to the Fair Labor Standard Act (FLSA) regulations and equals time and a half. The overtime rate of pay is calculated by (1) multiplying the hourly rate of pay by the hours worked at that rate to obtain the total rate of pay; (2) adding the total rate of pay for each set of hours worked to calculate the gross amount earned excluding overtime; (3) dividing the gross amount earned by the total number of hours worked; and (4) multiplying the rate of pay by ½ and adding that ½ to the rate of pay, as shown here:

Type of Work	Hourly Rate of Pay	Hours Worked	Total Rate of Pay
DBA weatherization work in Barnstable County	\$13.00 X	19 hrs =	\$247.00
DBA weatherization work in Plymouth County	\$14.39 X	13 hrs =	\$187.07
Non-DBA work	\$12.00 X	13 hrs =	\$156.00
Total Earned for Regular Rate of Pay			\$590.07

Gross Amount Earned	Total Hours Worked	Overtime Hourly Rate of Pay without the ½
\$590.07 ÷	45 =	\$13.11

The ½ for overtime purposes is calculated as follows:

Hourly Rate of Pay		½

$\$13.11 \times$	$1/2 =$	$\$6.56$
------------------	---------	----------

The overtime hourly rate of pay is $\$13.11 + \6.56 which equals **$\$19.67$** and the total overtime amount would be $5 \text{ hrs} \times \$19.67 =$ **$\$98.35$** .

Thus, in column 6, Rate of Pay, the upper half would be the overtime hourly rate of pay of $\$19.67$. In column 7, Gross Amount Earned including Overtime, would be calculated as follows:

Total Earned Per Regular Rate of Pay	Overtime $\frac{1}{2} \times$ Overtime Hours	Gross Amount Earned including Overtime
$\$590.07 +$	$(\$6.56 \times 5) =$	$\\$622.87$

- The addendum shows the exact location where DBA weatherization work is completed in each county and the worker who performed the DBA weatherization work at that location.

CAPLAW SAMPLE FOUR

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)



Rev. Dec. 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR OR SUBCONTRACTOR ADDRESS **18 Tremont Street
Bourne, MA 02532** OMB No.: 1215-0149
Jack Smith DBA Energy Savers Contractors Expires: 12/31/2011

PAYROLL NO. **2** FOR WEEK ENDING **09/18/2009** PROJECT AND LOCATION **DOE ARRA WAP; Barnstable County; Plymouth County** PROJECT OR CONTRACT NO. **DOE ARRA WAP**

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				Sun	Mon	Tues	Wed	Thurs	Fri	Sat				FICA	WITH- HOLDING TAX	Health	OTHER	TOTAL DEDUCTIONS	
				13	14	15	16	17	18	19				HOURS WORKED EACH DAY					
	1		O																
			S																
Ralph Brown- 1345 Barnstable County	1	Weatherization Worker	O								\$20.93								
			S	0.00	4.00	0.00	4.00	0.00	7.00	0.00	15.00	\$13.00	1.00						
Ralph Brown- 1345 Barnstable County	1	Door and Window Weatherization Worker	O								\$20.93								
			S	0.00	0.00	7.00	0.00	8.00	0.00	0.00	15.00	\$17.50	0.35						
Jim Dodge- 1289 Barnstable County	1	Weatherization Worker	O								\$19.67								
			S	0.00	7.00	0.00	8.00	0.00	4.00	0.00	19.00	\$13.00	1.00						
Jim Dodge- 1289 Plymouth County	1	Weatherization Worker	O								\$19.67								
			S	0.00	0.00	5.00	0.00	8.00	0.00	0.00	13.00	\$14.39	0.42						
		Overtime	O																
		Straighttime	S																
			O																
			S																
			O																
			S																

Overtime rate of pay. See instructions for how to calculate.

All deductions must be listed

TOTAL paycheck for that week including overtime. See instructions for how to calculate overtime.

TOTAL paycheck minus deductions

Overtime

Straighttime

DBA Hours Only

Actual hourly rate of pay

Hourly rate of cash pay in lieu of benefits

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Fill in as seen here if covering the DBA fringe rate using both a cash equivalent and a fringe benefit equivalent.

Date 09/23/2009

I, Sam Harrison Payroll Coordinator
 (Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by
Jack Smith DBA Energy Savers Contractors on the
 (Contractor or Subcontractor)

DOE ARRA WAP Work; that during the payroll period commencing on the
 (Building or Work)
14 day of 9, 2009, and ending the 18 day of 9, 2009,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

Jack Smith DBA Energy Savers Contractors from the full
 (Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

See deductions column in payroll form.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:
 (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

Check if either (1) covering all of the DBA fringe rate with a fringe benefit equivalent paid to an approved fund, plan or program OR (2) if, as in this sample, covering the DBA fringe rate using both a fringe benefit equivalent paid to an approved fund, plan or program AND cash in lieu of the DBA fringe rate.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Ralph Brown fringe benefits as Weatherization Worker for 9/14, 9/16 and 9/18	Cash in lieu \$1.00; benefits equivalent \$0.80
Ralph Brown fringe benefits as D&W Weatherization Worker for 9/15, 9/17	Cash in lieu \$0.35; benefits equivalent \$0.80
Jim Dodge fringe benefits as Weatherization Worker for 9/14, 9/16 and 9/18	Cash in lieu \$1.00; benefits equivalent \$0.80
Jim Dodge fringe benefits as Weatherization Worker for 9/15, 9/17	Cash in lieu \$0.42; benefits equivalent \$0.80

REMARKS:

NAME AND TITLE <u>Sam Harrison, Payroll Coordinator</u>	SIGNATURE
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THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Addendum to Certified Payroll Form WH-347

*Only include time spent on work funded by the American Recovery and Reinvestment Act of 2009 for which Davis-Bacon Act (DBA) prevailing wages are paid.

DATE	WORK SITE ADDRESS	WAP AGENCY	EMPLOYEE NAME & ID#	DBA* HOURS WORKED	EMPLOYEE NAME & ID#	DBA* HOURS WORKED
9/14/2009	145 Cherry Lane; Bourne	CAA	Ralph Brown, 1345	4		
			Jim Dodge, 1289	7		
9/15/2009	145 Cherry Lane; Bourne	CAA	Ralph Brown, 1345	7		
9/15/2009	129 Lewis Lane; Wareham	CAA	Jim Dodge, 1289	5		
9/16/2009	128 Tremont Street; Sandwich	CAA	Ralph Brown, 1345	4		
			Jim Dodge, 1289	8		
9/17/2009	128 Tremont Street; Sandwich	CAA	Ralph Brown, 1345	8		
9/17/2009	17 Jolly Drive; Carver	CAA	Jim Dodge, 1289	8		
9/18/2009	154 Dogwood Drive; Bourne	CAA	Ralph Brown, 1345	7		
			Jim Dodge, 1289	4		

APPENDIX E



DAVIS-BACON ACT (DBA) FRINGE BENEFITS Q&A

*Allison Ma'luf, Esq. – CAPLAW
revised as of 12/18/09*

The prevailing wage rate in the wage determinations for each state often consists of: (i) a hourly wage rate plus (ii) a hourly fringe rate. A contractor or subcontractor of a Weatherization Assistance Program (WAP) subgrantee or a WAP subgrantee that uses its own employees to perform weatherization work may compensate an employee for the DBA fringe rate with: (1) bona fide fringe benefits; (2) cash in lieu of benefits (taxable income); (3) combination of (1) and (2); or (4) any wages paid in excess of the wage rate. Certain requirements must be followed to compensate employees with (1), an employer's bona fide fringe benefits and this Q&A specifically addresses questions associated with that option.

1. What type of benefits may be used to meet the fringe rate obligations?

The U.S. Department of Labor (DOL) has determined that certain benefits common in the construction industry are considered to be fringe benefits that may be used to meet DBA fringe rate obligations. These benefits include health insurance, 401(k) contributions, pension, life insurance, disability insurance, sick leave, accident insurance, vacation pay, holiday pay, apprenticeship program pay, supplemental insurance (unemployment funds or AFLAC) or other bona fide fringe benefits specifically recognized by the DOL. *29 C.F.R. § 5.29*

2. When are fringe benefits considered to be paid to a DOL approved plan, fund or program so that they may be used to meet the DBA prevailing wage requirement?

There are two ways in which fringe benefits may be structured so that they may be used to meet the fringe benefit obligation.

The first way is when the fringe benefit is a contribution amount paid by the employer to a trustee or a third person. This contribution amount must cover the employer's total obligation for the current period and be made irrevocably pursuant to a fund, plan or program. The "third person" must not be affiliated with the contractor or subcontractor and the fund must be set up in such a way that neither the contractor nor subcontractor is able to recapture any of the contributions paid or in any way divert the funds for his/her own use or benefit. An example of this fringe benefit would be vested contributions made by the employer to an employee's 403(b) or 401(k) plan account or contributions made by the employer to a health insurance plan. *29 C.F.R. §§ 5.17, 5.24-5.28*

The second way is that the fringe benefit is given pursuant to a plan that (i) could be reasonably anticipated to provide benefits, (ii) represents a commitment that can be legally enforced (iii) is

financially responsible and (iv) is communicated in writing to the labors and mechanics affected. A plan that is “reasonably anticipated” to provide benefits must be able to withstand tests for actuarial soundness. **Additionally, to meet the DOL requirements, the contractor must set aside contributions in a bank account set up pursuant to sound actuarial principles and which would be sufficient to meet future obligations under the plan.** 2002 U.S.DOL DBA Resource Book, DBA/DBRA Compliance Principles, Fringe Benefits at <http://www.wdol.gov/docs/WRB2002.pdf>.

3. What type of benefits may NOT be used to meet the DBA fringe rate obligation?

Benefits that the contractor or subcontractor is required to provide by federal, state or local laws, such as worker’s compensation insurance, social security, etc., may not be used to meet fringe benefit obligations. Additionally, discretionary bonuses or bonuses given pursuant to holidays may not be used to meet the fringe benefit rate. 29 C.F.R. § 5.29

4. Do contributions to a benefit plan have to be made during a certain time frame for the benefit to be eligible to be a DBA fringe rate offset?

Yes. In order to qualify as an offset the employer’s contribution must be made not less often than quarterly. *Field Operations Handbook 15f10(a)*

5. Can averages be used to determine the contributions/payments upon which fringe range offsets for all employees are based?

No. The contributions/payments upon which a contractor bases a fringe offset must be made with respect to each individual laborer or mechanic. The amount contributed for each employee must be determined separately. *Field Operations Handbook 15f11(b)*

6. What period of time must be used to calculate the cash equivalent of the benefit that will be used to meet the DBA fringe rate?

The period of time to use is the period covered by the contribution. For example, if an employer contributes to a health benefits plan on a weekly basis, the total hours worked each week by each employee must be used to determine the hourly cash equivalent for which the employer is entitled to take credit for that employee.

7. How exactly is the cash equivalent of the benefit used to meet the DBA fringe rate to be calculated?

The offset is calculated by dividing the contribution amount for a certain time period by the total number of hours worked during that same time period. The number of hours worked includes both DBA and non-DBA time. Thus, if contributions are made weekly, cash equivalents would be computed weekly. If contributions are made bi-weekly, cash equivalents would be computed bi-weekly. If contributions are made monthly, cash equivalents would be computed monthly.

For example, the contractor contributes \$80 biweekly to a health benefits plan for the employee. During that two week period, the employee performs 60 hours of DBA work and 20 hours of non-DBA work. The cash equivalent is calculated by dividing \$80 by 80 hours which equals a cash equivalent of \$1.00 per hour.

8. What happens when the fringe benefits do not meet the entire DBA fringe rate obligation?

When the benefits do not meet the entire DBA fringe rate obligation, the contractor must pay the difference to the employee in cash. However, if the contractor's regular rate of pay is greater than the DBA wage rate requirement then the contractor may use the excess from the regular rate of pay to help meet the DBA fringe rate obligation.

For example, an employee works as an electrician in a county where the DBA wage rate is \$12.00 an hour and the fringe benefits rate is \$2.50 an hour. The employee is paid a regular wage rate of \$12.00 an hour and receives medical insurance from the contractor in the amount \$200 per month (\$2,400 per year). The employee works 40 hours a week (2080 hours a year (40 hours x 52 weeks)). The cash equivalent for the benefits received is \$1.15 per hour (\$2400 divided by 2080 hours). The contractor thus must pay the employee \$1.35 in cash as follows:

Regular Rate & DBA wage rate	\$12.00
Medical insurance benefit	\$ 1.15
Additional cash due	\$ 1.35
<hr/>	
Prevailing Wage	\$14.50

However, using the prior example, if the contractor's regular rate of pay is increased to \$13.35 an hour and the cash equivalent for benefits remains the same at \$1.15 per hour then the contractor may use the excess from the regular rate of pay, the \$1.35 an hour, to help meet the DBA fringe rate obligation as follows:

DBA wage rate	\$12.00
Medical insurance benefit	\$ 1.15
Offset from regular wage rate	\$ 1.35
<hr/>	
Prevailing Wage	\$14.50

9. How can I use paid vacation days to offset the fringe rate?

You may use the amount contributed to a vacation plan for each employee as an offset for the fringe rate if the plan is structured in one of the two ways described in Question 2. If the plan is structured pursuant to the second way described in Question 2, **it is important to remember that, to meet the DOL requirements, the contractor must also set aside contributions in a bank account set up pursuant to sound actuarial principles and which would be sufficient to meet future obligations under the plan.**

For example, an employee is an electrician in a county where the DBA wage rate is \$14.00 an hour and the fringe rate is \$2.00 an hour. The employee is paid a regular wage rate of \$14.00 an hour and receives paid vacation days from the contractor in the amount of \$200 per month (\$2,400). The employee works 40 hours a week (2080 hours a year (40 hours x 52 weeks)). The cash equivalent for the benefits received is \$1.15 per hour (\$2,400 divided by 2080 hours). The contractor must pay the employee \$0.85 in cash to completely meet his fringe rate obligation, as follows:

Regular Rate & DBA wage rate	\$14.00
Vacation days benefit	\$ 1.15
Additional cash due	\$ 0.85
<hr/>	
Prevailing Wage	\$16.00

10. Can an offset still be received for the DBA fringe rate obligation if the benefits plan offered has eligibility requirements? For example, a contractor requires a 30 day waiting period before an employee may participate in a benefits plan.

Depends. If the contractor is making contributions to the benefit plan on behalf of the employee during the 30 day waiting period, then the contractor may use a cash equivalent of those benefits to meet the DBA fringe rate obligation. However, if the contractor is not making contributions on behalf of the employee during the 30-day waiting period, the contractor may NOT use a cash equivalent of those benefits to meet the DBA fringe rate obligation during the 30 day waiting period. Once the employer begins to make contributions on behalf of the employee to the benefit plan, the employer may at that time use a cash equivalent of those benefits to meet the DBA fringe rate obligation.

What are permitted deductions?

The Copeland Anti-Kickback Act (CAK) prohibits “kickbacks” of wages and back wages. **MUST NOT** buy down DBA obligations with deductions.

The CAK requires WAP providers and contractors on covered projects to submit weekly a “Statement of Compliance” (i.e. certifying that the contractor has paid the required wages)

Permitted deductions include:

Deductions for social security or federal or state income tax withholding

Deductions for bona fide prepayment of wages.

Deductions for court ordered payments.

Deductions for purchase of U.S. savings bonds when voluntarily authorized by the employee

Deductions to repay loans or to purchase shares in a credit union.

Deductions voluntarily authorized for contributions to organizations such as the Red Cross, United Way, or similar charitable organizations.

Deductions for contributions to fringe benefit plans, provided that the deduction is not prohibited by law, that it is either voluntarily consented to by the employee in writing in advance of the time the work is done or provided for in a collective bargaining agreement, that no profit or other benefit is obtained by the contractor, and that the deduction serves the convenience of the employee.

Other than the permitted deductions, the Act does **NOT** permit deductions from wages without the approval of the Secretary of Labor.

APPENDIX F

Who is a laborer and mechanic?

NO – The following groups of individuals are NOT considered laborers or mechanics, and do not need to be paid Davis Bacon wages

Persons employed in a bona fide executive, administrative or professional capacity as defined in 29 CFR § 541—i.e., individuals who are properly classified as exempt under the executive, administrative or professional overtime exemptions to the federal Fair Labor Standards Act (FLSA). See http://www.dol.gov/DOL/allcfr/ESA/Title_29/Part_541/oc.htm

An equity owner with at least a 20% interest in an enterprise, and who is actively involved in the enterprise's management falls within the FLSA executive exemption even when and if s/he performs non-exempt/laborer and mechanic duties at the same time as other exempt duties (i.e., concurrent duties). To determine if the owner is actively involved in the enterprise's management, see 29 CFR 541.102 at http://www.dol.gov/DOL/allcfr/ESA/Title_29/Part_541/29CFR541.102.htm

Working foremen who are not exempt from the FLSA but who devote less than 20% of their time to laborer or mechanic duties

Technicians conducting energy audits

Federal service programs such as AmeriCorps and Vista that establish in the authorizing federal statute specific compensation to be given participants

Apprentices and trainees employed and working on the project pursuant to a bona fide apprenticeship or training program certified by a qualified state labor agency or the federal DOL

YES –The following groups of individuals are considered laborers or mechanics, and MUST be paid Davis Bacon wages

Working foremen who are not exempt from the FLSA and devote more than 20% of their time to laborer or mechanics duties

Auditors and inspectors performing laborers or mechanics duties separate and apart from the audit or inspection, even if they perform that work for less than 20% of the time, unless they fit within FLSA exemptions discussed in the second red box.

Federal youth programs that do NOT establish specific compensation to be given participants in the authorizing federal statute

Apprentices and trainees NOT employed and working on the project pursuant to a bona fide apprenticeship or training program certified by the federal DOL

Volunteers

Relatives

Clerical employees performing laborers and mechanics work

Persons classified as 1099 workers (“independent contractors”) under IRS rules

APPENDIX G

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

APPENDIX H

*****NOTE:** This sample contract should be thoughtfully reviewed and modified as necessary to meet the individual needs of a particular community action agency (CAA) and to comply with any applicable state law requirements and grant terms and conditions. Specifically, the highlighted sections must be revised to reflect the particular CAA and its weatherization program. However, other sections may need to be revised after a review of the contract. Moreover, the only exhibits to the contract throughout that are attached are those that are NOT state or program specific. We strongly recommend that when working with this sample contract, you consult with an attorney from your state that is well versed in the laws affecting CAAs****

AGREEMENT FOR DELIVERY OF RESIDENTIAL ENERGY CONSERVATION SERVICES TO CERTIFIED CLIENTS OF CAA, INC. WEATHERIZATION ASSISTANCE PROGRAM /ARRA

This **AGREEMENT** is hereto entered into by and between _____ [name of weatherization provider] (hereinafter CAA), a Massachusetts corporation organized pursuant to Chapter 180 of the Massachusetts General Laws and having a usual place of business at _____ [address], and

(hereinafter Contractor), having a usual place of business at

for the provision of energy services to low income clients who qualify under the regulations of the Weatherization Assistance Program (WAP) and who are identified to the Contractor by CAA as the recipients of ARRA-funded work on their homes.

RECITALS

- 1) The Commonwealth of Massachusetts, through its Department of Housing & Community Development (hereinafter DHCD), has received a grant from the U.S. Department of Energy (hereinafter DOE) for the use of federal funds pursuant to the American Recovery and Reinvestment Act of 2009 and Title IV of the Energy Conservation and Production Act (42 U.S.C. 686l et seq.) and the regulations promulgated pursuant thereto at 10 CFR part 440 et seq. to promote residential energy conservation by eligible persons through the Weatherization Assistance Program (hereinafter the Program).
- 2) It is the purpose of the Program to serve households with incomes at or below the higher of 200% of the federal poverty guidelines or 60% of the state median income and/or households which contain a member who received cash assistance payments under Title IV or XVI of the Social Security Act or applicable state or local law during the 12 month period preceding a determination of eligibility for weatherization assistance (the clients).
- 3) It is the intent of CAA as the duly authorized community action agency for delivery of weatherization services to _____ [name of towns or cities in which services will be provided], to expedite the delivery and ensure the consistent quality of weatherization services.
- 4) Consistent with said intent, CAA submitted requests for proposals (RFPs) to different contractors for various weatherization services. A copy of the RFP submitted to contractor is attached hereto as Exhibit A.
- 5) Upon receipt of said RFP, contractor submitted a completed contractor application (the application) and contractor proposal form (proposal) to CAA, copies of which are attached hereto as Exhibit B. In so doing, contractor agreed to be bound by the provisions of the RFP.
- 6) CAA accepted contractors proposal and application, and relying upon the representations made in said proposal and application, agreed to have contractor perform the labor and provide the materials set forth in said proposal at the price set forth in the proposal.

TERMS AND CONDITIONS

1.0 **TERMS.** This agreement commences on _____, 2009 and terminates on _____, unless sooner terminated in the manner specified in paragraph 8.0 below.

2.0 INCORPORATION OF RFP, CONTRACTOR PROPOSAL AND CONTRACTOR APPLICATION

2.1 The RFP attached hereto as Exhibit A is hereby incorporated into and made an integral part of this agreement. Contractor shall be bound by all the terms of said Exhibit A for the duration of this agreement. No waiver from any of the provisions of the RFP shall be effective unless such waiver is in writing and signed by the party from whom the waiver is sought.

2.2 The proposal and application attached hereto as Exhibit B are hereby incorporated into and made an integral part of this agreement. Contractor warrants and represents that all statements and representations in the application are true. CAA agrees to purchase and contractor agrees to sell only those items and services specified in the proposal. The terms of said proposal may not be altered, changed, abridged or amended except by a written instrument duly executed by both parties. No substitutions of any material described in the proposal shall be permitted unless approved in writing by CAA. No changes in the prices set forth in the proposal may be made at any time during the existence of this agreement without the written consent of CAA.

2.3 All applicable rules and expenditure limits of the WAP program are hereby incorporated by reference.

2.4 The following additional governmental requirements are incorporated herein, except as may otherwise be specifically excepted herein any subparagraph of this Section 2.4:

- 1) Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Subpart 60) (unless the total sum paid to the Contractor pursuant to this Agreement is less than \$10,000).
- 2) The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Subpart 3).
- 3) The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Subpart 5)(unless the total sum paid to the Contractor pursuant to this Agreement is less than \$2,000). The regulations found at 29 C.F.R. 5.5, as modified by the U.S. Department of Energy, are attached as Exhibit I hereto, which is incorporated into and made an integral part of this agreement, The minimum prevailing wage rate(s) that Contractor must pay to all laborers and mechanics performing work under this Agreement is attached hereto as Exhibit J. Contractor agrees to attend training sessions facilitated by CAA and/or DHCD on compliance with the Davis-Bacon Act.
- 4) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Subpart 5)(unless total sum paid to the Contractor pursuant to this Agreement is less than \$2,000).
- 5) All applicable DOE requirements and regulations pertaining to reporting.
- 6) The DOE requirements and regulations pertaining to copyrights, rights in data, and patent rights with respect to any discovery in the course of or under this Agreement, as set forth in 10 CFR SS 600.33).

- 7) All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Subpart 15)(unless the total sum paid to the Contractor pursuant to this Agreement is less than \$100,000).
- 8) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

2.5 The Contractor agrees to include the entirety of this Section 2 in any of its subcontracts for work performed or materials supplied under this Agreement.

2.6 The Contractor shall not discriminate with respect to program recipients or employees of the Contractors on the basis of race, color, religion, sex, age, national origin, ancestry, handicap, or any other basis prohibited by law.

3.0 QUALITY OF MATERIALS USED

3.1 All materials to be used by Contractor must first be approved by CAA and must meet standards established for such material in 10 CFR part 440, Appendix A, which is attached to and incorporated into this Agreement as Exhibit C.

3.2 Said material shall also meet or exceed any and all representations as to quality made by Contractor to CAA in the proposal and elsewhere, whether orally or in writing.

3.3 Contractor also agrees to comply with 10 CFR SS 440.2l(b), which requires the use of the most cost-effective weatherization materials. A copy of said section is attached hereto as Exhibit D.

3.4 Contractor shall guarantee any defect in materials, manufacture, design or installation of any material provided and/or installed pursuant to this Agreement for a period of one year from the date said materials are provided or are installed, whichever is later. Contractor shall remedy such defects promptly upon notice by the client or CAA, without charge. In the event of Contractor's failure to remedy such defects promptly, CAA may withhold payment to Contractor for any other weatherization work performed by Contractor pursuant to this Agreement. CAA shall be entitled to return to Contractor without payment therefor all materials of a quality inferior to that agreed to by CAA and Contractor.

4.0 ADMINISTRATION OF AGREEMENT

4.1 Contractor shall arrange a mutually convenient time with clients for evaluation and installation of all work to be performed, and Contractor shall adhere to said schedule. For each household in which Contractor is performing weatherization services, Contractor shall complete a Job Assignment Form and return it to CAA with the client's signature. Contractor's invoice shall accompany the Job Assignment Form. A copy of the sample Job Assignment Form is attached hereto as Exhibit E. All invoices shall be addressed to:

CAA Weatherization Program

Attn: [Name of CAA Contact Person]

[Street address]

[City], MA _____ [zip]

TEL: _____ FAX _____

_____ [email address]

4.2 Contractor shall not receive payment for any work performed pursuant to this Agreement unless and until CAA receives the completed Job Assignment Form and invoices provided for in subsection 4.1 of this paragraph, and until CAA makes a final inspection of the completed work and obtains written approval of its inspector as to such work. CAA agrees that, except when prevented from doing so by extraordinary circumstances, it shall conduct such inspections within 15 working days after it receives the evidence of completion described in subparagraph 4.1 of this section. CAA shall

endeavor to make payments within 14 days of a satisfactory inspection, but in any event, agrees to make such payments within 30 days of the satisfactory inspection.

4.3 Contractor shall designate a person at its principal place of business as an account representative for CAA. Contractor shall be responsible for assuring that the account representative will be current on all activity relating to CAA and will respond promptly to all inquiries from CAA.

4.4 Contractor shall work with the CAA Energy Division and Purchasing personnel to develop and refine requirements throughout the term of this Agreement.

4.5 Contractor is responsible to measure, where such measures are deemed necessary in CAA's reasonable judgement.

4.6 Contractor shall not bill CAA for more than \$ [REDACTED] for materials and labor for any single dwelling unit for which labor and/or materials are being provided pursuant to this Agreement, unless such additional charge is authorized in advance in writing by CAA.

4.7 Contractor agrees to provide a performance bond or equivalent to CAA upon request.

5.0 PROHIBITED CONDUCT BY CONTRACTOR

5.1 Contractor shall not subcontract to any individual or entity any portion, or all, of any labor it is performing pursuant to this Agreement.

5.2 As specified in the RFP, Contractor agrees not to violate the applicable provisions of the Copeland Anti-Kickback Act and the Contract Work Hours and Safety Standards Act.

6.0 REPRESENTATIONS OF CONTRACTOR. Contractor warrants and reports the following.

6.1 That it possesses the technical and professional expertise and the fiscal capability necessary to carry out any work which may be authorized under this Agreement in a prompt and workmanlike manner.

6.2 All contractors involved with the Weatherization Program shall take out and maintain insurance coverage as listed below with respect to the operations of the Program. This insurance shall be provided at the Contractor's expense and shall be in full force and effect for the full term of the Contract. All policies shall be issued by companies authorized to write that type of insurance under the laws of Massachusetts. Contractors shall provide the following minimum coverage with respect to the operations performed by any employee, subcontractor or supplier. Contractors must provide CAA with valid Certificates of Insurance detailing the coverage listed below.

1)	Bodily Injury & Property Damage	\$1,000,000 each occurrence
		\$1,000,000 general aggregate
	Products & Completed Operations	\$1,000,000 aggregate
	Personal & Advertising Injury	\$1,000,000 each occurrence

The policy shall include coverage relating to explosion, collapse, and underground property damage and shall include contractual liability coverage.

2) Provide the following Worker's Compensation in accordance with M.G.L. c. 149 34A and c. 152 as amended:

Worker's Compensation, Coverage A	Provide Statutory Minimum
Worker's Compensation, Coverage B	\$500,000 each accident
	\$500,000 disease per employee
	\$500,000 disease policy

If a company claims exemption from this requirement, the owner must provide a notarized statement detailing the reasons for the exemption.

3) Auto Liability

\$1,000,000

- 6.3 That it has complied, at its own expense, with all licensing and other requirements imposed by federal, state or local statute, ordinance, regulation or code to provide the services it is required to provide under this Agreement.
- 6.4 That it shall comply with any applicable terms and conditions of the contract between the CAA and state agency or department authorized to facilitate Program funds, attached hereto as Exhibit F.
- 6.5 That it is entering into this Agreement in good faith, without fraud, and that it is supplying the materials and performing the work provided for in this Agreement solely on its own behalf, without connection with, or obligation to any undisclosed person or firm.
- 6.6 That, to the best of the Contractor's knowledge, no employee of CAA or member of the immediate family or an employee of CAA has a financial interest in the Contractor.
- 6.7 That neither the Contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 7.0 **ADDITIONAL REQUIREMENTS OF SUPPLIERS AND INSTALLERS OF INSULATION.** In addition to other responsibilities of Contractor set forth herein, if Contractor is supplying or installing insulation pursuant to this Agreement, it shall have the following additional responsibilities.
- 7.1 Contractor shall be responsible for measuring the attic area, including knee walls and slopes where needed. Contractor shall cut access space and insulate all access ways to install cellulose and/or fiberglass to specified density. The attic shall be ventilated in conformance with all applicable federal, state and local statutes, ordinances, codes and regulations.
- 7.2 Upon completion of the installation of insulation, Contractor shall promptly complete and display in the attics in which the insulation was a completed, a Certificate of Insulation completed and signed by the Contractor. The Certificate of Insulation form shall be displayed by stapling it to the rafters or by other means in which the form will be, and can be, expected to remain easily visible. A copy of said Certificate of Insulation is attached hereto as Exhibit G.
- 7.3 Contractor shall also comply in all respects with the documents attached hereto as Exhibit C entitled, Standards for Weatherization Materials, and Required Standards of Performance, and shall complete and submit to CAA, for each dwelling unit in which it installs insulation pursuant to this Agreement, an Attic Inspection Form identical to what which is attached hereto as Exhibit H.

8.0 **TERMINATION**

8.1 In the event that the United States, **Massachusetts**, or local government, any agency or agencies thereof, or any other funding source shall notify CAA at any time during the term of this Agreement that CAA or any weatherization program thereof, is no longer to be funded, or that its funding is to be substantially reduced, so as in the reasonable judgment of CAA, to make the continued performance of this or any related or subsidiary service/purchase Agreement with Contractor economically unfeasible to CAA, this Agreement or said related or subsidiary service/purchase Agreement shall be immediately terminated upon notice in writing from CAA and no additional penalties or charges of any kind shall be imposed from the date of termination.

8.2 CAA may also terminate this Agreement for any of the following reasons:

- 1) A breach of any provision of this Agreement by Contractor;
- 2) The refusal of Contractor to sell material provided to CAA pursuant to this Agreement at a price no higher than the price said material is sold to other customers of Contractor,

following notice by CAA to Contractor that it has reason to believe that Contractor is selling such material to other customers at a lower price;

- 3) CAA's reasonable dissatisfaction with the quality of materials and services provided by Contractor pursuant to this Agreement;
- 4) The receipt by CAA of verified complaints from clients regarding the failure of Contractor to keep appointments, or its lack of promptness in performing weatherization services;
- 5) The discovery by CAA that any of the representations made by Contractor in this Agreement or in the proposal or application are false;
- 6) Conduct of Contractor, which in CAA's sole reasonable judgment, is improper, offensive to clients, or unlawful in any respect.

8.3 In the event of termination, the amount of any partial payment for authorized work which is not completed as of the effective date of termination, shall be within the reasonable discretion of CAA. CAA shall have the absolute right, in the event of termination, to assign to another Contractor prior to termination. CAA also reserves the right to make any termination notice effective only upon the completion by Contractor of work begun prior to said termination notice.

8.4 Said termination notice shall in no event constitute a waiver of any rights CAA may have to recover any and all funds due it from Contractor as a result of any breach of the Agreement by Contractor. Upon termination, CAA may withhold any payments to Contractor for the purpose of set-off until such time as the exact amount of damages is agreed upon or otherwise determined.

9.0 **INDEMNIFICATION.** Contractor agrees to defend and hold harmless CAA, DHCD, DOE, [name of CAA], their agents, servants, employees, directors, officers, and others in active concert with them from the consequences of all acts, omissions, negligence, or defaults on Contractor's part or that of its agents, servants, or employees, including, without limitation, any claims which may arise in the event of:

9.1 Non-availability of specified weatherization materials as of a given date.

9.2 Natural disaster, strike, lockout, civil disorder, callbacks, or any other cause, foreseeable or unforeseeable, which may interfere with the scheduled completion of any weatherization work ordered under this Agreement.

9.3 Refusal, failure, or mistake on the part of any client to accept, in whole or in part, any work ordered hereunder; provided that in the case of a partial nonacceptance by the client or directions by the client, after work has been commenced, that such work cease prior to completion, contractor shall close out the work at that location promptly and with due regard for current climatic and other conditions which may be applicable. In such event, Contractor shall forward to CAA promptly a written explanation of the circumstances together with an invoice requesting partial payment. The amount of any payment to be made to Contractor under such circumstances shall be within the reasonable discretion of CAA.

9.4 Theft of Contractor's tools, equipment or materials; fire; vandalism; accidents; injury to persons or property; or delivery of service to an address or location other than as specified by CAA; or

9.5 Inability of Contractor, for whatever reason, to gain access to the premises of a client in order to carry out work orders duly issued under this Agreement. As is set forth in Paragraph 4.0 and 4.1 hereof, Contractor is solely responsible for scheduling any and all work assignments hereunder, so as to minimize its risk of loss from such occurrences. CAA is not responsible in any way for scheduling such work once the work has been issued to the Contractor.

10. **INSPECTION.** In accordance with federal guidelines, Contractor agrees to make available to the representatives of CAA, upon three (3) days working notice, all of its books, records, accounts,

premises, and/or vehicles which may be used in connection with the program wherever the same may be located, for the purpose of verifying the progress or completion of any work ordered hereunder, or the accuracy or reasonableness of any costs which may be incurred or billed in connection with such work. Contractor also agrees to give such access to its records, premises, and vehicles to representatives of the Commonwealth of Massachusetts and to the U.S. Government for similar purposes.

11. MISCELLANEOUS.

- 11.1 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts in so far as the contractual remedies of the parties are concerned. This Agreement is further subject to, and is intended to be conformity with and governed by, all applicable federal, state and local statutes, regulations, ordinances and codes, including those governing the provision of weatherization materials and the Massachusetts Data Privacy Regulation, codified at 201 C.M.R. 17.
- 11.2 This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and may not be altered, changed, or amended other than in writing signed by both parties hereto.
- 11.3 Failure of CAA to complain of any action or non-action on the part of Contractor, no matter how long the same may continue, shall never be considered a waiver of any of its rights hereunder. No waiver at any time of any of the provisions hereof by CAA shall be construed as a waiver of any of the other provisions hereof, or as a waiver at any subsequent time of the same provision.
- 11.4 Should one or more phrases, clauses, sentences or paragraphs of this Agreement be invalid, the remaining portions of this Agreement or any part thereof shall not be thereby affected, and this Agreement shall be construed as if such invalid portion or portions had not been inserted into this Agreement.
- 11.5 The individual parties signing this Agreement warrant and represent that they have the proper corporate or other authority to execute this Agreement.
- 11.6 The headings of this Agreement are used solely for convenience and are not to be used in construing or interpreting this Agreement.

_____ [NAME OF CAA] CONTRACTOR _____

By: _____ [Printed or Typed Name] [____ Title] By: _____ [Printed or typed name] ____ [Title]

Date _____ Date _____

Enclosures: Exhibits A through J

List of Exhibits

- Exhibit A** Copy of RFP submitted to contractor (not included in this sample contract)
- Exhibit B** Completed contractor application and proposal form (not included in this sample contract)
- Exhibit C** Standards for Weatherization Materials at 10 CFR part 440, Appendix A
- Exhibit D** Most cost-effective weatherization materials requirement at 10 CFR SS 440.21(b)
- Exhibit E** Copy of sample Job Assignment Form (not included in this sample contract)
- Exhibit F** Applicable terms and conditions CAA WAP contract with state (not included in this sample contract)
- Exhibit G** Certificate of Insulation
- Exhibit H** Attic Inspection Form
- Exhibit I** Regulations at 29 C.F.R. 5.5, as modified by the U.S. Department of Energy
- Exhibit J** Minimum prevailing wage rates (not included in this sample contract)

EXHIBIT C

APPENDIX A—STANDARDS FOR WEATHERIZATION MATERIALS

If the standards listed in this appendix conflict with those required by current local codes, the local code shall have precedence and a copy of the applicable section will be retained with procurement records.

The following Government standards are produced by the Consumer Product Safety Commission and are published in title 16, Code of Federal Regulations:

Thermal Insulating Materials for Building Elements Including Walls, Floors, Ceilings, Attics, and Roofs Insulation—organic fiber—conformance to Interim Safety Standard in 16 CFR part 1209;

Fire Safety Requirements for Thermal Insulating Materials According to Insulation Use—Attic Floor—insulation materials intended for exposed use in attic floors shall be capable of meeting the same flammability requirements given for cellulose insulation in 16 CFR part 1209;

Enclosed spaces—insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting smoldering combustion requirements in 16 CFR part 1209.

The following standards which are not otherwise set forth in part 440 are incorporated by reference and made part of part 440. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on January 3, 2002 and a notice of any change in these materials will be published in the FEDERAL REGISTER. The standards incorporated by reference are available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, Suite 700, Washington, DC 20001.

The standards incorporated by reference in part 440 can be obtained from the following sources:

Air Conditioning and Refrigeration Institute, 4301 N. Fairfax Drive, Suite 425, Arlington, VA 22203; (703) 524-8800.
American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 104, Schaumburg, Illinois 60173-4268; (847) 303-5664.
American Gas Association, 400 N. Capitol Street, NW, Washington, DC 20001; (202) 824-7000.
American National Standards Institute, Inc., 11 West 42nd Street, New York, NY 10036; (212) 642-4900.
American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990; (212) 591-7722.

American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959; (610) 832-9585.

Association of Home Appliance Manufacturers, 1111 19th Street, NW, Suite 402, Washington DC, 20036; (202) 872-5955.

Federal Specifications, General Services Administration, General Services Administration, Federal Supply Service, Office of the CIO and Marketing Division, Room 800, 1941 Jefferson Davis Hwy., Arlington, VA 22202; (703) 305-6288.

Gas Appliance Manufacturers Association, 2107 Wilson Boulevard, Suite 600, Arlington, Virginia 22201; (703) 525-7060.

National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209; (703) 841-3200.

National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101; (617) 770-3000.

Sheet Metal and Air Conditioning Contractors Association, 4201 Lafayette Center Drive, Chantilly, Virginia 20151-1209; (703) 803-2980.

Solar Rating and Certification Corporation, c/o FSEC, 1679 Clearlake Road, Cocoa, FL 32922-5703; (321) 638-1537.

Steel Door Institute, 30200 Detroit Road, Cleveland, OH 44145-1967; (440) 899-0010.

Steel Window Institute, 1300 Sumner Avenue, Cleveland, OH 44115-2851; (216) 241-7333.

Tubular Exchanger Manufacturers Association, 25 North Broadway, Tarrytown, NY 10591; (914) 322-0040.

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096; (847) 272-8800.

Window & Door Manufacturers Association, 1400 East Touhy Avenue, Suite 470, Des Plaines, IL 60018; (800) 223-2301.

More information regarding the standards in this reference can be obtained from the following sources:
Environmental Protection Agency, 401 M Street, NW, Washington, DC 20006; (202) 554-1080.

National Institute of Standards and Technology, U.S. Department of Commerce, Gaithersburg, MD 20899; (301) 975-2000.

Weatherization Assistance Program, Office of Building Technology Assistance, Energy Efficiency and Renewable Energy, 1000 Independence Avenue, SW, EE-42, Washington, DC 20585-0121; (202) 586-4074.

THERMAL INSULATING MATERIALS FOR BUILDING ELEMENTS INCLUDING WALLS, FLOORS, CEILINGS, ATTICS, AND ROOFS

[Standards for conformance]

Insulation--mineral fiber:	
Blanket insulation	ASTM ¹ C665-98.
Roof insulation board	ASTM C726-00a.
Loose-fill insulation	ASTM C764-99.
Insulation--mineral cellular:	
Vermiculite loose-fill insulation	ASTM C516-80 (1996)e1.
Perlite loose-fill insulation .	ASTM C549-81 (1995)e1.
Cellular glass insulation block	ASTM C552-00.
Perlite insulation board . . .	ASTM C728-97.
Insulation--organic fiber:	
Cellulosic fiber insulating board	ASTM C208-95.
Cellulose loose-fill insulation	ASTM C739-00.
Cellulose wet-spray insulation	ASTM C1149-97.
Insulation--organic cellular:	
Preformed block-type polystyrene insulation	ASTM C578-95.
Rigid preformed polyurethane insulation board	ASTM C591-00.
Polyurethane or polyisocyanurate insulation board face with aluminum foil on both sides	FS ² HH-I-1972/1 (1981).
Polyurethane or polyisocyanurate insulation board face with felt on both sides	FS HH-I-1972/2 (1981) and Amendment 1, October 3, 1985).
Insulation--composite boards:	
Mineral fiber insulation board	ASTM C726-00a.
Perlite board	ASTM C728-97.
Gypsum board and polyurethane or polyisocyanurate composite board	FS HH-I-1972/4 (1981).

¹ ASTM indicates American Society for Testing and Materials.

² FS indicates Federal Specifications.

THERMAL INSULATING MATERIALS FOR BUILDING ELEMENTS INCLUDING WALLS, FLOORS, CEILINGS, ATTICS, AND ROOFS--Continued

[Standards for conformance]

Materials used as a patch to reduce infiltration through the building envelope	Commercially available.
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THERMAL INSULATING MATERIALS FOR PIPES, DUCTS, AND EQUIPMENT SUCH AS BOILERS AND FURNACES

[Standards for conformance]

Insulation--mineral fiber:	
Preformed pipe insulation .	ASTM ¹ C547-00.
Blanket and felt insulation (industrial type)	ASTM C553-00.
Blanket insulation and blanket type pipe insulation (metal-mesh covered, industrial type)	ASTM C592-00.
Block and board insulation	ASTM C612-00.
Spray applied mineral fiber thermal and sound absorbing insulation	ASTM C1014-99ae1.
High-temperature fiber blanket insulation	ASTM C892-00.
Duct work insulation	ASTM C1290-00.
Insulation--mineral cellular:	
Calcium silicate block and pipe insulation	ASTM C533-95.
Cellular glass insulation . .	ASTM C552-00.
Expanded perlite block and pipe insulation	ASTM C610-99.
Insulation--organic cellular:	
Preformed flexible elastomeric cellular insulation in sheet and tubular form	ASTM C534-99.
Unfaced preformed rigid cellular polyurethane insulation	ASTM C591-00.
Insulation skirting	Commercially available.

¹ ASTM indicates American Society for Testing and Materials.

FIRE SAFETY REQUIREMENTS FOR INSULATING MATERIALS ACCORDING TO INSULATION USE

[Standards for conformance]

Attic floor	Insulation materials intended for exposed use in attic floors shall be capable of meeting the same smoldering combustion requirements given for cellulose insulation in ASTM ¹ C739-00.
Enclosed space	Insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting the same smoldering combustion requirements given for cellulose insulation in ASTM C739-00.
Exposed interior walls and ceilings	Insulation materials, including those with combustible facings, which remain exposed and serve as wall or ceiling interior finish, shall have a flame spread classification not to exceed 150 (per ASTM E84-00a).
Exterior envelope walls and roofs	Exterior envelope walls and roofs containing thermal insulation shall meet applicable local government building code requirements for the complete wall or roof assembly.
Pipes, ducts, and equipment	Insulation materials intended for use on pipes, ducts, and equipment shall be capable of meeting a flame spread classification not to exceed 150 (per ASTM E84-00a).

¹ ASTM indicates American Society for Testing and Materials.

STORM WINDOWS

[Standards for conformance]

Storm windows:	
All storm windows . .	AAMA/NWWDA ¹ 101/I.S. 2-97.
Aluminum frame storm windows	AAMA ² 1002.10-93.
Rigid vinyl frame storm windows	ASTM ³ D4726-00.
Frameless plastic glazing storm	Required minimum thickness for windows is 6 mil (0.006 inches). Commercially available.
Movable insulation systems for windows	

¹ AAMA/NWWDA indicates American Architectural Manufacturers Association/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

² AAMA indicates American Architectural Manufacturers Association.

³ ASTM indicates American Society for Testing and Materials.

REPLACEMENT WINDOWS

[Standards for conformance]

Replacement windows:	
All windows	AAMA/NWWDA ¹ 101/I.S. 2-97.
Steel frame windows	Steel Window Institute recommended specifications for steel windows, 1990.
Rigid vinyl frame windows	ASTM ² D4726-00.

¹ AAMA/NWWDA indicates American Architectural Manufacturers Association/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

² ASTM indicates American Society for Testing and Materials.

STORM DOORS

[Standards for conformance]

Storm doors:	
All storm (glass) doors	AAMA/NWWDA ¹ 101/I.S. 2-97.
Aluminum frame storm doors	AAMA ² 1102.7-89.
Sliding glass storm doors	AAMA 1002.10-93.
Rigid vinyl storm doors .	ASTM ³ D3678-97 and D4726-00..
Vestibules:	
Materials to construct vestibules	Commercially available.

¹ AAMA/NWWDA indicates American Architectural Manufacturers Association/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

² AAMA indicates American Architectural Manufacturers Association.

³ ASTM indicates American Society for Testing and Materials.

REPLACEMENT DOORS

[Standards for conformance]

Replacement doors:	
All replacement doors	AAMA/NWWDA ¹ 101/I.S. 2-97.
Steel doors	ANSI ² A250.8-98.
Wood doors:	
Flush doors	ANSI/NWWDA ³ I.S. 1-97 (Amendment, exterior door provisions).
Stile and rail doors	NWWDA ⁴ I.S. 6-97.

¹ AAMA/NWWDA indicates American Architectural Manufacturers Association/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

² ANSI indicates American National Standards Institute.

³ ANSI/NWWDA indicates American National Standards Institute/National Wood Window & Door Association (now the Window & Door Manufacturers Association).

⁴ NWWDA indicates National Wood Window & Door Association (now the Window & Door Manufacturers Association).

CAULKS AND SEALANTS

[Standards for conformance]

Caulks and sealants:	
Glazing compounds for metal sash	ASTM ¹ C669-00.
Oil and resin base caulks	ASTM C570-00.
Acrylic (solvent types) sealants	ASTM C920-98e1.
Butyl rubber sealants	FS ² Commercial Item Description A-A-272 (6/7/95).
Chlorosulfonated polyethylene sealants	ASTM C920-98e1.
Latex sealing compounds	ASTM C834-00e1.
Elastomeric joint sealants (normally considered to include polysulfide, polyurethane, and silicone)	ASTM C920-98e1.
Preformed gaskets and sealing materials	ASTM C509-00.
Duct sealing mastic	UL ³ 181A-M, Second Edition, 1994 and UL 181B-M, First Edition, 1995.

¹ ASTM indicates American Society for Testing and Materials.

² FS indicates Federal Specifications.

³ UL indicates Underwriters Laboratories.

WEATHERSTRIPPING

[Standards for conformance]

Weatherstripping	Commercially available. Selected according to the provisions cited in ASTM ¹ C755-97. Permeance not greater than 1 perm when determined according to the desiccant method described in ASTM E96-00.
Vapor retarders	
Items to improve attic ventilation	Commercially available.

¹ ASTM indicates American Society for Testing and Materials.

BOILER/FURNACE CONTROL SYSTEMS

[Standards for conformance]

Automatic set back thermostats	Listed by UL ¹ . Conformance to NEMA ² DC3-1989 (R1996).
Line voltage or low voltage room thermostats	Listed by UL. Conformance to NEMA DC3-1989 (R1996).
Clock thermostats	Listed by UL. Conformance to NEMA DC3-1989 (R1996).
Automatic gas ignition systems	ANSI ³ Z21.21-2000. AGA ⁴ Laboratories Certification Seal.
Energy management systems	Listed by UL.
Hydronic boiler controls	Listed by UL.
Other burner controls . . .	Listed by UL.

¹ UL indicates Underwriters Laboratories.

² NEMA indicates National Electrical Manufacturers Association.

³ ANSI indicates American National Standards Institute.

⁴ AGA indicates American Gas Association.

HEAT EXCHANGERS

[Standards for conformance]

Heat exchangers, water-to-water and steam-to-water	ASME ¹ Boiler and Pressure Vessel Code, 1998, Sections II, V, VIII, IX, and X, as applicable to pressure vessels. Standards of Tubular Exchanger Manufacturers Association, Eighth Edition, 1999.
Heat exchangers with gas-fired appliances ²	ANSI/UL ³ 462, Ninth Edition, approved by ANSI February 28, 1997.

¹ ASME indicates American Society for Mechanical Engineers.

² The heat reclaimer is for installation in a section of the vent connector from appliances equipped with draft hoods or appliances equipped with powered burners or induced draft and not equipped with a draft hood.

³ ANSI/UL indicates American National Standards Institute/Underwriters Laboratories.

WATER HEATER MODIFICATIONS

[Standards for conformance]

Insulate tank and distribution piping	(See insulation section of this appendix)
Install heat traps on inlet and outlet piping	Applicable local plumbing code.
Install/replace water heater heating elements	Listed by UL ¹ .
Electric, freeze-prevention tape for pipes	Listed by UL.
Install stack damper, gas-fueled	ANSI ² Z21.66-1996, including Exhibits A & B, and ANSI Z223.1-1999 (same as NFPA ³ 54-1999).
Install stack damper, oil-fueled	UL 17, Third Edition, 1994, NFPA 31-2001, NFPA 211-2000 (same as ANSI A52.1), and ANSI/NFPA 70-1999 (same as IEEE ⁴ National Electrical Code).
Install water flow modifiers	Commercially available.

¹ UL indicates Underwriters Laboratories.

² ANSI indicates American National Standards Institute.

³ NFPA indicates National Fire Prevention Association.

⁴ IEEE indicates Institute of Electrical and Electronics Engineers.

REPLACEMENT WATER HEATERS

[Standards for conformance]

Electric (resistance) water heaters	10 CFR ¹ 430 and UL ³ 174.
Heat pump water heaters	UL 1995, Second Edition, 1995. Electrical components to be listed by UL.
Gas water heaters: Rated ≤ 75 kBtu/hr . .	10 CFR 430 and ANSI ⁴ Z21.10.1-1998.
Rated ≥ 75 kBtu/hr . .	ANSI Z21.10.3-1998.
Oil water heaters	UL 732, Fifth Edition, 1995.

¹ CFR indicates Code of Federal Regulations.

² UL indicates Underwriters Laboratories.

³ ANSI indicates American National Standards Institute.

SOLAR WATER HEATING SYSTEMS

[Standards for conformance]

Solar water heating systems including forced circulation, integral collector storage, thermo-syphon, and self-pumping systems	System must be certified per SRCC ¹ OG 300, July 16, 1998.
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¹ SRCC indicates Solar Rating and Certification Corporation.

WASTE HEAT RECOVERY DEVICES

[Standards for conformance]

Desuperheater/water heaters	ARI ¹ 470-1995 and UL 1995, Second Edition, 1995.
Condensing heat exchangers	Commercially available components installed per manufacturers' specifications. NFPA ² 211-2000 (same as ANSI A52.1) may apply in certain instances. See also the Heat Exchangers section of this appendix.
Heat pump water heating heat recovery systems	UL 1995, Second Edition, 1995. Electrical components to be listed by UL.
Energy recovery equipment	Energy Systems Analysis and Management, 1997 (SMACNA ³).

¹ ARI indicates Air Conditioning and Refrigeration Institute.

² NFPA indicates National Fire Prevention Association.

³ SMACNA denotes Sheet Metal and Air Conditioning Contractors' National Association.

BOILER REPAIR AND

		BOILER REPAIR AND MODIFICATIONS/EFFICIENCY IMPROVEMENTS—Continued	
		[Standards for conformance]	
Install gas conversion burners	ANSI ¹ Z21.8-1994 (for gas- or oil-fired systems), ANSI Z21.17-1998, and ANSI Z223.1-1999 (same as NFPA 54-1999). AGA ² Laboratories Certification Seal.	Replace heat exchangers, tubes	Protection from flame contact with conversion burners by refractory shield.
Replace oil burner	UL ³ 296, Ninth Edition, 1994 and NFPA 31-2001.	Install/replace thermostatic radiator valves	Commercially available. One-pipe steam systems require air vents on each radiator; see manufacturers' requirements.
Install burners (oil/gas)	ANSI Z223.1-1999 for gas equipment and NFPA ⁴ 31-2001 for oil equipment.	Install boiler duty cycle control system	Commercially available. ANSI/NFPA 70-1999 (same as IEEE National Electrical Code) and local electrical code provisions for wiring.
Re-adjust boiler water temperature or install automatic boiler temperature reset control	ASME ⁵ CSD-1-1998, ANSI Z223.1-1999, and NFPA 31-2001.		
Replace/modify boilers	ASME Boiler and Pressure Vessel Code, 1998, Section II, IV, V, VI, VIII, IX, and X. Boilers must be Hydronics Institute Division of GAMA equipment.		
Clean heat exchanger, adjust burner air shutter(s), check smoke no. on oil-fueled equipment. Check operation of pump(s) and replacement filters.	Per manufacturers' instructions.		
Replace combustion chambers	Refractory linings may be required for conversions.		

¹ ANSI indicates American National Standards Institute.
² AGA indicates American Gas Association.
³ UL indicates Underwriters Laboratories.
⁴ NFPA indicates National Fire Prevention Association.
⁵ ASME indicates American Society for Mechanical Engineers.

HEATING AND COOLING SYSTEM REPAIRS AND
TUNE-UPS/EFFICIENCY IMPROVEMENTS
[Standards for conformance]

Install duct insulation . .	ASTM ¹ C612-00 (see insulation sections of this appendix).
Reduce Input of burner; derate gas-fueled equipment	Local utility company and procedures if applicable for gas-fueled furnaces and ANSI ² Z223.1-1999 (same as NFPA ³ 54-1999) including Appendix H.
Repair/replace oil-fired equipment	NFPA 31-2001.
Replace combustion chamber in oil-fired furnaces or boilers	NFPA 31-2001.
Clean heat exchanger and adjust burner; adjust air shutter and check CO ₂ and stack temperature. Clean or replace air filter on forced air furnace	ANSI Z223.1-1999 (same as NFPA 54-1999) including Appendix H.
Install vent dampers for gas-fueled heating systems	Applicable sections of ANSI Z223.1-1999 (same as NFPA 54-1999) including Appendix H, I, J, and K. ANSI Z21.66-1996 and Exhibits A&B for electrically operated dampers.
Install vent dampers for oil-fueled heating systems	Applicable sections of NFPA 31-2001 for installation and in conformance with UL ⁴ 17, Third Edition, 1994.

HEATING AND COOLING SYSTEM REPAIRS AND
TUNE-UPS/EFFICIENCY IMPROVEMENTS—Continued
[Standards for conformance]

Reduce excess combustion air: A: Reduce vent connector size of gas-fueled appliances B: Adjust barometric draft regulator for oil fuels	ANSI Z223.1-1999 (same as NFPA 54-1999) part 9 and Appendices G & H. NFPA 31-2001 and per furnace and boiler manufacturers' instructions. ANSI Z21.71-1993.
Replace constant burning pilot with electric ignition device on gas-fueled furnaces or boilers	
Readjust fan switch on forced air gas-or oil-fueled furnaces	Applicable sections and Appendix H of ANSI Z223.1-1999 (same as NFPA 54-1999) for gas furnaces and NFPA 31-2001 for oil furnaces.
Replace burners	See install burners (oil/gas).
Install/replace duct furnaces (gas)	ANSI Z223.1-1999 (same as NFPA 54-1999).
Install/replace heat pumps	ARI ⁵ 210/240-1994. UL 1995, Second Edition, 1995. Commercially available.
Replace air diffusers, intakes, registers, and grilles	
Install/replace warm air heating metal ducts	UL 181, Ninth Edition 1996, including UL 181A, Second Edition 1994 and 181B, First Edition, 1995.
Filter alarm units	Commercially available.

¹ ASTM indicates American Society for Testing and Materials.

² ANSI indicates American National Standards Institute.

³ NFPA indicates National Fire Prevention Association.

⁴ UL indicates Underwriters Laboratories.

⁵ ARI indicates Air Conditioning and Refrigeration Institute.

REPLACEMENT FURNACES, BOILERS, AND
WOOD STOVES

[Standards for conformance]

Chimneys, fireplaces, vents and solid fuel burning appliances	NFPA ¹ 211-2000 (same as ANSI ² A52.1).
Gas-fired furnaces	ANSI Z21.47-1998 and ANSI Z223.1-1999 (same as NFPA 54- 1999).
Oil-fired furnaces	UL ³ 727, Eighth Edition, 1994 and NFPA 31- 2001.
Liquefied petroleum gas storage	NFPA 58-2001.
Ventilation fans: Including electric attic, ceiling, and whole-house fans	UL 507, Ninth Edition, 1999.

¹ NFPA indicates National Fire Prevention Association.
² ANSI indicates American National Standards Institute.
³ UL indicates Underwriters Laboratories.

SCREENS, WINDOW FILMS, AND REFLECTIVE
MATERIALS

[Standards for conformance]

Insect screens	Commercially available.
Window films	Commercially available.
Shade screens:	
Fiberglass shade screens	Commercially available.
Polyester shade screens	Commercially available.
Rigid awnings:	
Wood rigid awnings	Commercially available.
Metal rigid awnings .	Commercially available.
Louver systems:	
Wood louver awnings	Commercially available.
Metal louver awnings	Commercially available.
Industrial-grade white paint used as a heat- reflective measure on roofs, awnings, window louvers, doors, and exterior duct work (exposed)	Commercially available.

AIR CONDITIONERS AND COOLING EQUIPMENT

[Standards for conformance]

Air conditioners: Central air conditioners Room size units	ARI ¹ 210/240-1994. ANSI/AHAM ² RAC 1- 1992.
Other cooling equipment: Including evaporative coolers, heat pumps, and other equipment	UL ³ 1995, Second Edition, 1995.

¹ ARI indicates Air Conditioning and Refrigeration
Institute.
² ANSI/AHAM indicates American National Standards
Institute/Assodation of Home Appliance Manufacturers.
³ UL indicates Underwriters Laboratories.

REFRIGERATORS

[Standards for conformance]

Refrigerator/freezers (does not include freezer-only units)	UL ¹ 250. Replaced units must be disposed of properly per Clean Air Act 1990, Section 608, as amended by 40 CFR ² 82, May 14, 1993.
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¹ UL indicates Underwriters Laboratories.
² CFR indicates Code of Federal Regulations.

FLUORESCENT LAMPS AND FIXTURES

[Standards for conformance]

Compact fluorescent lamps	ANSI/UL ¹ 542, Seventh Edition, February 6, 1997 and UL 1993, First Edition, 1993.
Fluorescent lighting fixtures	UL 1570, Fourth Edition, 1995.

¹ ANSI/UL indicates American National Standards
Institute/Underwriters Laboratories.

EXHIBIT D

Section 440.21 Weatherization materials standards and energy audit procedures.

(a) Paragraph (b) of this section describes the required standards for weatherization materials. Paragraphs (c) and (d) of this section describe the cost-effectiveness tests that weatherization materials must pass before they may be installed in an eligible dwelling unit. Paragraph (e) of this section lists the other energy audit requirements that do not pertain to cost-effectiveness tests of weatherization materials. Paragraphs (f) and (g) of this section describe the use of priority lists and presumptively cost-effective general heat waste reduction materials as part of a State's energy audit procedures. Paragraph (h) of this section explains that a State's energy audit procedures and priority lists must be re-approved by DOE every 5 years.

(b) Only weatherization materials which are listed in Appendix A to this part and which meet or exceed standards prescribed in Appendix A to this part may be purchased with funds provided under this part. However, DOE may approve an unlisted material upon application from any State.

(c) Except for materials to eliminate health and safety hazards allowable under Section 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective. These materials must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, installation, and on-site supervisory personnel as defined by the Department. States have the option of requiring additional related costs to be included in the determination of cost-effectiveness. The cost of incidental repairs must be included in the cost of the package of measures installed in a dwelling.

(d) The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness according to paragraph (c) of this section after:

- (1) Adjusting for interaction between architectural and mechanical weatherization materials by using generally accepted engineering methods to decrease the estimated fuel cost savings for a lower priority weatherization material in light of fuel cost savings for a related higher priority weatherization material; and
- (2) Eliminating any weatherization materials that are no longer cost-effective, as adjusted under paragraph (d)(1) of this section.

(e) The energy audit procedures also must --

- (1) Compute the cost of fuel saved per year by taking into account the climatic data of the area where the dwelling unit is located, where the base temperature that determines the number of heating or cooling degree days (if used) reasonably approximates conditions when operation of heating and cooling equipment is required to maintain comfort, and must otherwise use reasonable energy estimating methods and assumptions;
- (2) Determine existing energy use and energy requirements of the dwelling unit from actual energy bills or by generally accepted engineering calculations;
- (3) Address significant heating and cooling needs;
- (4) Make provision for the use of advanced diagnostic and assessment techniques which DOE has determined are consistent with sound engineering practices;
- (5) Identify health and safety hazards to be abated with DOE funds in compliance with the State's DOE-approved health and safety procedures under Section 440.16(h);
- (6) Treat the dwelling unit as a whole system by examining its heating and cooling system, its air exchange system, and its occupants' living habits and needs, and making necessary adjustments to the priority of weatherization materials with adequate documentation of the reasons for such an adjustment; and
- (7) Be specifically approved by DOE for use on each major dwelling type that represents a significant portion of the State's weatherization program in light of the varying energy audit requirements of different dwelling types including single-family dwellings, multi-family buildings, and mobile homes.

(f) For similar dwelling units without unusual energy-consuming characteristics, energy audits may be accomplished by using a priority list developed by conducting, in compliance with paragraphs (b) through (e) of this section, site-specific energy audits of a representative subset of these dwelling units. For DOE approval, States must describe how the priority list was developed, how the subset of similar homes was determined, and circumstances that will require site-specific

audits rather than the use of the priority lists. States also must provide the input data and list of weatherization measures recommended by the energy audit software or manual methods for several dwelling units from the subset of similar units.

(g) States may use, as a part of an energy audit, general heat waste reduction weatherization materials that DOE has determined to be generally cost-effective. States may request approval to use general heat waste materials not listed in DOE policy guidance by providing documentation of their cost-effectiveness and a description of the circumstances under which such materials will be used.

(h) States must resubmit their energy audit procedures (and priority lists, if applicable, under certain conditions) to DOE for approval every five years. States must also resubmit to DOE, for approval every five years, their list of general heat waste materials in addition to those approved by DOE in policy guidance, if applicable. Policy guidance will describe the information States must submit to DOE and the circumstances that reduce or increase documentation requirements.

EXHIBIT G

CERTIFICATE OF INSULATION

Part 1 - General

Address of Residence:

Name and Address of Contractor:

Date of Installation:

Part 2 - Areas Insulated

WALLS (_____ Sq. Ft.)

Type of Insulation:

Manufacturer:

R-Value Installed _____

Amount Installed _____

CEILING (_____ Sq. Ft.)

Type of Insulation:

Manufacturer:

R-Value Installed _____

Amount Installed _____

FLOORS (_____ Sq. Ft.)

Type of Insulation:

Manufacturer:

R-Value Installed _____

Amount Installed _____

Part 3 - Certification

I, _____, certify that the residence identified in Part 1 was insulated as specified in Part 2 and the installation was conducted in conformance to applicable Codes, Standards, and Regulations.

Signature

This Certificate must be completed and prominently posted adjacent to the electrical panel.

EXHIBIT H

Attic Inspection Form
Mandatory for all Attic Insulation Jobs

Client Name: _____ Job #: _____

Date: _____

Section A: To be filled out by the WAP Auditor during the initial interview with the client.

Are there any recessed light fixtures in this dwelling?

Location: _____

Yes ___ No ___ Don't Know ___

Section B: To be filled out by the auditor upon visual inspection of the ceiling area beneath the attic.

1. Recessed Lighting Fixtures

2. Other potential heat producers

_____	_____
_____	_____
_____	_____
_____	_____

Section C: To be completed by the Insulation Contractor at the time of the installation.

Number of recessed lights: _____
Furnace Flues: _____ Other _____
Heat Producers: _____
Total Guards Needed: _____

Should agree with Section B.

Section D: To be signed by the insulation contractor after completion.

I have installed _____ insulation guards.

Signed: _____

Subgrantee/Company: _____

Date: _____

Section E: To be signed by the weatherization client.

I agree that the number of insulation guards indicated have been installed as noted above. I have received the notice to the client that was attached below.

Signature: _____ Date: _____

(DETACH HERE AND GIVE TO CLIENT)

Notice to Weatherization Clients: The purpose of insulation guards is to ensure that your dwelling is in compliance with the National Electric Code. The insulation used meets all Federal test specifications. However, since insulation retains heat, it is essential that heat producing sources be protected. For this reason, it is important that insulation guards not be removed, altered or covered. Be sure to use insulation guards if you install new recessed light fixtures or some similar fixture. Also be certain not to obstruct any attic ventilation devices.

EXHIBIT I

Template: FA-Special Terms and Conditions

8-20-2009 FINAL (APPROVED BY DOL)

FA-TC-0050

Prescription: Include for ARRA Awards when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT ("RECOVERY ACT") Clauses are required.

CLAUSE XX. DAVIS BACON ACT REQUIREMENTS

A. Definitions. For purposes of this Clause, Clause XX, Contract Work Hours and Safety Standards Act, and Clause XX, Recipient Functions, the following definitions are applicable:

(1) *Award* means the Award by the Department of Energy (DOE) to a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Subrecipients, Contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act.

(2) *"Construction, alteration or repair"* means all types of work done by laborers and mechanics employed by the Subrecipient, construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(a) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(b) Painting and decorating; or

(c) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.

(3) *Contract* means a written procurement contract executed by a Subrecipient for the acquisition of property and services for construction, alteration, and repair under a Subaward. For purposes of these Clauses, a Contract shall include subcontracts and lower-tier subcontracts under the Contract.

(4) *Contracting Officer* means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) *Contractor* means an entity that enters into a Contract. For purposes of these Clauses, Contractor shall include subcontractors and lower-tier subcontractors.

(6) *Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant directly from the Federal Government. The term includes the State that

receives an Award from DOE and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(7) "*Site of the work*"—

(a) Means--

(i) The physical place or places where the construction called for in the Award, Subaward, or Contract will remain when work on it is completed; and

(ii) Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the project;

(b) Except as provided in paragraph (c) of this definition, the site of the work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(1) They are dedicated exclusively, or nearly so, to performance of the project; and

(2) They are adjacent or virtually adjacent to the site of the work as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition; and

(c) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or Federal Award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of an Award, Subaward, or Contract.

(8) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower- tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(9) *Subrecipient* means a non-Federal entity that expends Federal awards received from a pass-through entity [Recipient] to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. The term includes a Community Action Agency (CAA), local agency, or other entity to which a Subaward under the Award is made by a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the DBA work performed by all laborers and mechanics employed by

contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant of the Recovery Act.

B. Davis-Bacon Act

(1)(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached to the Subaward or Contract and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Recipient, a Subrecipient, or Contractor and such laborers and mechanics.

(i) Applicable to Recipient Only: Prior to the issuance of the Subaward or Contract, the Recipient shall notify the Contracting Officer of the site of the work in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(ii) If the Subaward or Contract is or has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph B(4) below; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(c) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the paragraph entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(d) The wage determination (including any additional classifications and wage rates conformed under paragraph B(2) of this Clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and Contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(a) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Subaward or

Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
- (ii) The classification is utilized in the area by the construction industry.
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Subrecipient (and Contractor, when applicable) and the laborers and mechanics to be employed in the classification (if known), or their representatives agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of this agreement. If the Contracting Officer agrees with the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(c) In the event the Subrecipient (and Contractor, when applicable), and the laborers or mechanics to be employed in the classification, or their representatives, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of the disagreement. The Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs B(2)(b) or B(2)(c) of this Clause shall be paid to all workers performing work in the classification under the Award, Subaward, or Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Award, Subaward, or Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient and Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Subrecipient or Contractor does not make payments to a trustee or other third person, the Subrecipient or Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Subrecipient or Contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient or Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

C. Rates of Wages

(1) The minimum wages to be paid laborers and mechanics under the Subaward or Contract involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to the Award, Subaward, or Contract.

(2) If the Subaward or Contract has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

D. Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the Recipient, Subrecipient and Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (4) of the provision entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Subrecipient or Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Subrecipient or Contractor employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and

certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2)(a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Subrecipient. The Subrecipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Recipient. The Recipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph D(1) of this Clause, except that the full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(b) The Recipient is responsible for the ensuring that all Subrecipients and Contractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this Clause. The Subrecipient is responsible for ensuring all Contractors, including lower tier subcontractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this clause. Subrecipients and Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request for transmission to the Contracting Officer, the Recipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The Recipient shall also obtain and provide the full social security number and current address of each covered worker upon request by the Contracting Officer or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Recipient to require a Subrecipient or Contractor to provide addresses and social security numbers to the Recipient for its own records, without weekly submission to the Contracting Officer.

(c) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Recipient, Subrecipient or Contractor or his or her agent who pays or supervises the payment of the persons employed under the Subaward or Contract and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph D(2)(a) of this Clause, the appropriate information is being maintained under paragraph D(1) of this Clause, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Subaward or Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Subaward or Contract.

(d) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph D(2)(c) of this Clause.

(e) The falsification of any of the certifications in Paragraph D, Payrolls and Basic Records, of this Clause may subject the Recipient, Subrecipient or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Recipient, Subrecipient, or Contractor shall make the records required under paragraph D(1) of this Clause available for inspection, copying, or transcription by the Contracting Officer, authorized representatives of the Contracting Officer, or the Department of Labor. The Subrecipient or Contractor shall permit the Contracting Officer, authorized representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Recipient, Subrecipient, or Contractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Recipient, Subrecipient, or Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

E. *Withholding of Funds*

(1) The DOE Contracting Officer shall, upon his or her or its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Recipient or any other contract or Federal Award with the same Recipient, on this or any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Recipient so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or a Contractor the full amount of wages required by the Award or Subaward or a Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Award or Subaward or a Contract, the Contracting Officer may, after written notice to the Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from any Subrecipient or Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or Contractor the full amount of wages required by the Subaward or Contract. In the event of failure to pay any laborer or mechanic,

including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Subaward or Contract, the Recipient may, after written notice to the Subrecipient or Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased or the Government may cause the suspension of any further payment under any other contract or Federal award with the same Subrecipient or Contractor, on any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Subrecipient or Contractor.

F. Apprentices and Trainees

(1) Apprentices.

(a) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(b) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subrecipient or Contractor as to the entire work force under the registered program.

(c) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph F(1) of this Clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(d) Where a Subrecipient or Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subrecipient's or Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(e) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits,

apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(f) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Subrecipient or Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees.

(a) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(b) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship/training program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(c) In the event OATELS withdraws approval of a training program, the Subrecipient or Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this Clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

G. Compliance with Copeland Act Requirements

The Recipient, Subrecipient or Contractor shall comply with the requirements of 29 CFR Part 3 which are hereby incorporated by reference in the Award, Subaward or Contract.

H. Subawards and Contracts

(1) The Recipient, the Subrecipient and Contractor shall insert in the Subaward or any Contracts this Clause entitled "Davis Bacon Act Requirements" and such other clauses as the Contracting Officer may require. The Recipient shall be responsible for ensuring compliance by any Subrecipient or Contractor with all of the requirements contained in this Clause. The Subrecipient shall be responsible for the compliance by Contractor with all of the requirements contained in this Clause.

(2) Within 14 days after issuance of a Subaward, the Recipient shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Subaward and Contract for construction within the United States, including the Subrecipient's and Contractor's signed and dated acknowledgment that this Clause) has been included in the Subaward and any Contracts. The SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf) . Within 14 days after issuance of a Contract or lower- tier subcontract, the Subrecipient shall deliver to the Recipient a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Contract and lower-tier subcontract for construction within the United States, including the Contractor and lower- tier subcontractor's signed and dated acknowledgment that this Clause has been included in any Contract and lower- tier subcontracts. SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf) . The Recipient shall immediately provide to the DOE Contracting Officer the completed Standard Forms (SF) 1413.

I. Contract Termination -- Debarment

A breach of these provisions may be grounds for termination of the Award, Subaward, or Contract and for debarment as a Contractor or subcontractor as provided in 29 CFR 5.12.

J. Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in the Award, Subaward or Contract.

K. Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and shall not be subject to any other dispute provision that may be contained in the Award, Subaward, and Contract. Disputes within the meaning of this Clause include disputes between the Recipient, Subrecipient (including any Contractor) and the Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

L. Certification of Eligibility.

(1) By entering into this Award, Subaward, or Contract (as applicable), the Recipient, Subrecipient, or Contractor, respectively certifies that neither it (nor he or she) nor any person or firm who has an interest in the Recipient, Subrecipient, or Contractor's firm, is a person, entity, or firm ineligible

to be awarded Government contracts or Government awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this Award, Subaward or Contract shall be subcontracted to any person or firm ineligible for award of a Government contract or Government award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

M. Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under an Award, Subaward or Contract must be submitted for approval in writing by the head of the federal contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the Award, Subaward or Contract. Any amount paid by the Subrecipient or Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Subrecipient or Contractor and shall not be reimbursed by the Recipient or Subrecipient. If the Government refuses to authorize the use of the overtime, the Subrecipient or Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

Clause XXX. Contract Work Hours and Safety Standards Act

This Clause entitled "Contract Work Hours and Safety Standards Act (CWHSSA)" shall apply to any Subaward or Contract in an amount in excess of \$100,000. As used in this CWHSSA Clause, the terms laborers and mechanics include watchmen and guards.

A. Overtime requirements. No Subrecipient or Contractor contracting for any part of the Subaward work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph B herein, the Subrecipient or Contractor responsible therefor shall be liable for the unpaid wages. In addition, such Subrecipient or Contractor shall be liable to the United States (in the case of work done under a Subaward or Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provision set forth in CWHSSA paragraph A, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

C. Withholding for unpaid wages and liquidated damages.

(1) The DOE Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Recipient on this or any other Federal Award or Federal contract with the same Recipient on any other federally-assisted Award or contract subject to the CWHSSA, which is held by the same Recipient such sums as may be determined to be necessary to satisfy any liabilities of such Recipient for unpaid wages and liquidated damages as provided in the clause set forth in CWHSSA, paragraph B of this Clause.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause from any moneys payable on account of work performed by the Subrecipient or Contractor on this or any other federally assisted subaward or contract subject to the CWHSSA, which is held by the same Subrecipient or Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Subrecipient or Contractor for unpaid wages and liquidated damages as provided in clause set forth in CWHSSA, paragraph B of this Clause.

D. Subcontracts. The Subrecipient shall insert in a Contract and a Contractor shall insert in any lower tier subcontracts, the clauses set forth in these CWHSSA paragraphs (A) through (D) and also a provision requiring the Contractors to include this CWHSSA Clause in any lower tier subcontracts. The Recipient shall be responsible for compliance by any Subrecipient or Contractor, with the CWHSSA paragraphs A through D. The Subrecipient shall be responsible for compliance by any Contractor (including lower- tier subcontractors).

E. The Subrecipient or Contractor shall maintain payrolls and basic payrolls in accordance with Clause XX, Davis- Bacon Act Requirements, for all laborers and mechanics, including guards and watchmen working on the Subaward or Contracts. These records are subject to the requirements set forth in Clause XX, Davis Bacon Requirements.

Clause XXXX. RECIPIENT FUNCTIONS

(1) On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:

- (a) Obtain, maintain, and monitor all DBA certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
- (b) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
- (c) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (b) above;

- (d) Address any Subrecipient and any Contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
 - (e) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
 - (f) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
 - (g) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
 - (h) Provide copies of all records upon request by DOE or DOL in a timely manner.
- (2) All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.
- (3) In the event of, and in response to any Freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.