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| | STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES<br>**Division of Facilities Construction and Management** | **DFCM** |

# ARRA-FUNDED
# STANDARD LOW BID PROJECT

**June 13, 2011**

# DAVIS ATC - MAIN BUILDING PHOTOVOLTAIC PROJECT

## UTAH COLLEGE OF APPLIED TECHNOLOGY
## KAYSVILLE, UTAH

DFCM Project Number 10224220

Sparano + Mooney Architecture
511 West 200 South
Salt Lake City, Utah 84101

**NOTICE: This project is funded through the American Reinvestment and Recovery Act of 2009 (ARRA) and has special federal requirements which are outlined in Attachments "1-5" to this Invitation to Bid.**

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This project will be funded by the American Recovery and Reinvestment Act of 2009 (ARRA) and has special federal requirements. For more information see the following documents that are available on the DFCM web site at http://dfcm.utah.gov/StdDocs/index.html "Standard Documents" – "Reference Documents" - ARRA Documents" or are available upon request from DFCM:

- Federal Flow Down
- Federal Assurances
- Davis Bacon Clause

Current copies of the DFCM General Conditions dated May 25, 2005 and all Supplemental General Conditions are available upon request at the DFCM office and on the DFCM web site at http://dfcm.utah.gov/StdDocs/index.html "Standard Documents" – "Reference Documents" – "Supplemental General Conditions", and are hereby made part of these contract documents by reference

The Agreement and General Conditions dated May 25, 2005 have been updated from versions that were formally adopted and in use prior to this date. The changes made to the General Conditions are identified in a document entitled Revisions to General Conditions that is available on DFCM's web site at http://dfcm.utah.gov

# NOTICE TO CONTRACTORS

Sealed bids will be received by the Division of Facilities Construction and Management (DFCM) for:

**DAVIS ATC – MAIN BUILDING - PHOTOVOLTAIC PROJECT**
**UTAH COLLEGE OF APPLIED TECHNOLOGY – KAYSVILLE, UTAH**
**DFCM PROJECT NO. 10224220**

Bids will be in accordance with the Contract Documents that will be available at 4:00 PM on Monday, June 13, 2011, and distributed in electronic format only on CDs from DFCM, 4110 State Office Building, Salt Lake City, Utah and on the DFCM web page at http://dfcm.utah.gov. For questions regarding this project, please contact Matt Boyer, DFCM, at 801-541-0945. No others are to be contacted regarding this bidding process. The construction budget for this project is $250,000.00.

A **mandatory** pre-bid meeting will be held at 11:00 AM on Thursday, June 16, 2011 at the DATC Main Building, 550 East 300 South, Kaysville, Utah. Meet at the main entry. All bidders wishing to bid on this project are required to attend this meeting.

Bids will be received until the hour of 3:00 PM on Wednesday, June 22, 2011 at DFCM, 4ll0 State Office Building, Salt Lake City, Utah 84114. Bids will be opened and read aloud in the DFCM Conference Room, 4110 State Office Building, Salt Lake City, Utah. NOTE: Bids must be received at 4110 State Office Building by the specified time.

A bid bond in the amount of five percent (5%) of the bid amount, made payable to the Division of Facilities Construction and Management on DFCM's bid bond form, shall accompany the bid.

The Division of Facilities Construction and Management reserves the right to reject any or all bids or to waive any formality or technicality in any bid in the interest of DFCM.

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT
Marla Workman, Contract Coordinator
4110 State Office Building, Salt Lake City, Utah 84114

# PROJECT DESCRIPTION

## PROJECT SCOPE

Provide and install the specified photovoltaic system with all of the necessary mounts, inverters, wiring, and components to be a complete and functioning system to the intent in which it is designed in the contract documents. Contractor must comply with all of the ARRA Federal Guidelines outlined in the bid documents and RFP as part of their bid, including but not limited to Davis Bacon Wages, weekly payroll reporting, total hours worked reporting, buy American certification including assurance letters, certificate of compliance stating that the materials and assemblies meet the "BUY AMERICAN provisions of ARRA" which are signed by the manufacturer or their legally binding representative. Contractor will work closely with the DATC to minimize impact on the College through out the project.

This is a tax exempt project.

## PROJECT RISK FACTORS

1. Contractor does not follow all of the Federal ARRA Guidelines and risks the project funding.

2. Contractor damages the new flat PVC roofing system or the new metal panel roofing system during the course of the project.

3. PV Panel System does not produce the specified wattage.

4. Contractor will have to accommodate DATC student classes.

5. Public interaction.

## CONTRACTOR PREQUALIFICATIONS

1. Contractor is to have completed a minimum of four projects of equal or greater size (in terms of kilowatts generated).

2. Contractor is to have completed a minimum of one project using American Recovery & Reinvestment Act (ARRA) Funding.

3. Contractor shall be a licensed electrical contractor in the State of Utah carrying an S200 license OR a Solar Photovoltaic Contractor carrying an S202 license.

4. Contractor shall have current certification from the North American Board of Certified Energy Practitioners (NABCEP).

# PROJECT SCHEDULE

| | |
|---|---|
| **PROJECT NAME:** | **PHOTOVOLTAIC PROJECT- MAIN BUILDING – DATC CAMPUS UTAH COLLEGE OF APPLIED TECHNOLOGY – KAYSVILLE, UTAH** |
| **DFCM PROJECT NO.** | **10224220** |

| Event | Day | Date | Time | Place |
|---|---|---|---|---|
| Bidding Documents Available | Monday | June 13, 2011 | 4:00 PM | DFCM<br>4110 State Office Bldg<br>SLC, UT and the DFCM web site * |
| **Mandatory** Pre-bid Site Meeting | Thursday | June 16, 2011 | 11:00 AM | DATC Main Building<br>550 East 300 South<br>Kaysville UT<br>Meet at Main Entry |
| Last Day to Submit Questions via email only | Monday | June 20, 2011 | 10:00 AM | Matt Boyer – DFCM<br>E-mail mboyer@utah.gov |
| Addendum Deadline (exception for bid delays) | Tuesday | June 21, 2011 | 4:00 PM | DFCM web site * |
| Prime Contractors Turn In Bid and Bid Bond | Wednesday | June 22, 2011 | 3:00 PM | DFCM<br>4110 State Office Bldg<br>SLC, UT |
| Sub-contractor List Due | Thursday | June 23, 2011 | 3:00 PM | DFCM<br>4110 State Office Bldg<br>SLC, UT<br>Fax 801-538-3677 |
| Substantial Completion Date | Thursday | September 29, 2011 | | |

* **NOTE: DFCM's web site address is http://dfcm.utah.gov**

# BID FORM

NAME OF BIDDER _____ DATE _____

To the Division of Facilities Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114

The undersigned, responsive to the "Notice to Contractors" and in accordance with the "Instructions to Bidders", in compliance with your invitation for bids for the **DAVIS ATC - MAIN BUILDING PHOTOVOLTAIC PROJECT - UTAH COLLEGE OF APPLIED TECHNOLOGY – KAYSVILLE, UTAH - DFCM PROJECT NO. 10224220** and having examined the Contract Documents and the site of the proposed Work and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of labor, hereby proposes to furnish all labor, materials and supplies as required for the Work in accordance with the Contract Documents including all ARRA Federal Requirements including additional ARRA reporting as specified and within the time set forth and at the price stated below. This price is to cover all expenses incurred in performing the Work required under the Contract Documents of which this bid is a part:

I/We acknowledge receipt of the following Addenda: _____

For all work shown on the Drawings and described in the Specifications and Contract Documents, I/we agree to perform for the sum of:

_____ DOLLARS ($_____)
(In case of discrepancy, written amount shall govern)

I/We guarantee that the Work will be Substantially Complete by **September 29, 2011**, should I/we be the successful bidder, and agree to pay liquidated damages in the amount of **$400.00** per day for each day after expiration of the Contract Time as stated in Article 3 of the Contractor's Agreement.

This bid shall be good for 45 days after bid opening.

Enclosed is a 5% bid bond, as required, in the sum of _____

The undersigned Contractor's License Number for Utah is _____._____

Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within ten (10) days, unless a shorter time is specified in the Contract Documents, and deliver acceptable Performance and Payment bonds in the prescribed form in the amount of 100% of the Contract Sum for faithful performance of the contract.

The Bid Bond attached, in the amount not less than five percent (5%) of the above bid sum, shall become the property of the Division of Facilities Construction and Management as liquidated damages for delay and additional expense caused thereby in the event that the contract is not executed and/or acceptable l00% Performance and Payment bonds are not delivered within the time set forth.

Type of Organization:

_____
(Corporation, Partnership, Individual, etc.)

Any request and information related to Utah Preference Laws:

_____

Respectfully submitted,

_____
Name of Bidder

ADDRESS:

_____

_____

_____
Authorized Signature

# INSTRUCTIONS TO BIDDERS

## 1. Drawings and Specifications, Other Contract Documents

Drawings and Specifications, as well as other available Contract Documents, may be obtained as stated in the Invitation to Bid.

## 2. Bids

Before submitting a bid, each contractor shall carefully examine the Contract Documents, shall visit the site of the Work; shall fully inform themselves as to all existing conditions and limitations; and shall include in the bid the cost of all items required by the Contract Documents. If the bidder observes that portions of the Contract Documents are at variance with applicable laws, building codes, rules, regulations or contain obvious erroneous or uncoordinated information, the bidder shall promptly notify the DFCM Representative and the necessary changes shall be accomplished by Addendum.

The bid, bearing original signatures, must be typed or handwritten in ink on the Bid Form provided in the procurement documents and submitted in a sealed envelope at the location specified by the Invitation to Bid prior to the deadline for submission of bids.

A bid bond properly signed by a qualified surety, as indicated on the DFCM Bid Bond form provided along with this Instruction to Bidders, in the amount of 5% of the bid, shall accompany the bid submission to DFCM. THIS BID BOND MUST BE ON THE DFCM BID BOND FORM PROVIDED WITH THIS INSTRUCTION TO BIDDERS IN ORDER TO BE CONSIDERED AN ACCEPTABLE BID unless only one bid is received by DFCM, or the failure to comply with the bid bond requirements is determined by the Director of DFCM to be nonsubstantial based on the following:

(a) the bid bond is submitted on a form other than DFCM's required Bid Bond form and the bid bond meets all other requirements including being issued by a surety firm authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement; and

(b) the contractor provides a bid bond properly signed by a qualified surety and on the required DFCM Bid Bond form by the close of business of the next succeeding business day after the DFCM notifies the bidder of the defective bid bond.

## 3. Contract and Bond

The Contractor's Agreement will be in the form found in the specifications. The Contract Time will be as indicated in the bid. The successful bidder, simultaneously with the execution of the Contract Agreement, will be required to furnish a performance bond and a payment bond, both bearing original signatures, upon the forms provided in the procurement documents. The performance and payment bonds shall be for an amount equal to one hundred percent (100%) of the contract sum and secured from a company that meets the requirements specified in the requisite forms. Any bonding requirements for subcontractors will be specified in the Supplementary General Conditions.

## 4. Listing of Subcontractors

Listing of Subcontractors shall be as summarized in the "Instructions and Subcontractor's List Form", which are included as part of these Contract Documents. The Subcontractors List shall be delivered to DFCM or faxed to DFCM at 801-538-3677 within 24 hours of the bid opening. Requirements for listing additional subcontractors will be listed in the Contract Documents.

DFCM retains the right to audit or take other steps necessary to confirm compliance with requirements for the listing and changing of subcontractors. Any contractor who is found to not be in compliance with these requirements is subject to a debarment hearing and may be debarred from consideration for award of contracts for a period of up to three years.

## 5. Interpretation of Drawings and Specifications

If any person or entity contemplating submitting a bid is in doubt as to the meaning of any part of the drawings, specifications or other Contract Documents, such person shall submit to the DFCM Project Manager a request for an interpretation thereof. The person or entity submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by addenda posted on DFCM's web site at http://dfcm.utah.gov. Neither the DFCM nor A/E will be responsible for any other explanations or interpretations of the proposed documents. A/E shall be deemed to refer to the architect or engineer hired by DFCM as the A/E or Consultant for the Project.

## 6. Addenda

Addenda will be posted on DFCM's web site at http://dfcm.utah.gov. Contractors are responsible for obtaining information contained in each addendum from the web site. Addenda issued prior to the submittal deadline shall become part of the bidding process and must be acknowledged on the bid form. Failure to acknowledge addenda may result in disqualification from bidding.

## 7. Award of Contract

The Contract will be awarded as soon as possible to the lowest, responsive and responsible bidder, based on the lowest combination of base bid and acceptable prioritized alternates, provided the bid is reasonable, is in the interests of the State of Utah to accept and after applying the Utah Preference Laws in U.C.A. Title 63, Chapter 56. DFCM reserves the right to waive any technicalities or formalities in any bid or in the bidding. Alternates will be accepted on a prioritized basis with Alternate 1 being highest priority, Alternate 2 having second priority, etc.

## 8. DFCM Contractor Performance Rating

As a contractor completes each DFCM project, DFCM, the architect/engineer and the using agency will evaluate project performance based on the enclosed "DFCM Contractor Performance Rating" form. The ratings issued on this project will not affect this project but may affect the award on future projects.

**9. Licensure**

The Contractor shall comply with and require all of its subcontractors to comply with the license laws as required by the State of Utah.

**10. Permits**

In concurrence with the requirements for permitting in the General Conditions, it is the responsibility of the Contractor to obtain the fugitive dust plan requirements from the Utah Division of Air Quality and the SWPPP requirements from the Utah Department of Environmental Quality and submit the completed forms and pay any permit fee that may be required for this specific project. Failure to obtain the required permit may result in work stoppage and/or fines from the regulating authority that will be the sole responsibility of the Contractor. Any delay to the project as a result of any such failure to obtain the permit or noncompliance with the permit shall not be eligible for any extension in the Contract Time.

**11. Right to Reject Bids**

DFCM reserves the right to reject any or all Bids.

**12. Time is of the Essence**

Time is of the essence in regard to all the requirements of the Contract Documents.

**13. Withdrawal of Bids**

Bids may be withdrawn on written request received from bidder prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

**14. Product Approvals**

Where reference is made to one or more proprietary products in the Contract Documents, but restrictive descriptive materials of one or more manufacturer(s) is referred to in the Contract Documents, the products of other manufacturers will be accepted, provided they equal or exceed the standards set forth in the drawings and specifications and are compatible with the intent and purpose of the design, subject to the written approval of the A/E. Such written approval must occur prior to the deadline established for the last scheduled addenda to be issued. The A/E's written approval will be in an issued addendum. If the descriptive material is not restrictive, the products of other manufacturers specified will be accepted without prior approval provided they are compatible with the intent and purpose of the design as determined by the A/E.

## 15. Financial Responsibility of Contractors, Subcontractors and Sub-subcontractors

Contractors shall respond promptly to any inquiry in writing by DFCM to any concern of financial responsibility of the contractor, subcontractor or sub-subcontractor.

## 16. Debarment

By submitting a bid, the Contractor certifies that neither it nor its principals, including project and site managers, have been, or are under consideration for, debarment or suspension, or any action that would exclude such from participation in a construction contract by any governmental department or agency. If the Contractor cannot certify this statement, attach to the bid a detailed written explanation which must be reviewed and approved by DFCM as part of the requirements for award of the Project.

# BID BOND

(Title 63, Chapter 56, U. C. A. l953, as Amended)

**KNOW ALL PERSONS BY THESE PRESENTS:**

That _____ hereinafter referred to as the "Principal," and_____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed, (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the STATE OF UTAH, hereinafter referred to as the "Obligee," in the amount of $_____ (5% of the accompanying bid), being the sum of this Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH** that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for the_____ _____ Project.

**NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH**, that if the said principal does not execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the principal, then the sum of the amount stated above will be forfeited to the State of Utah as liquidated damages and not as a penalty; if the said principal shall execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the Principal, then this obligation shall be null and void. It is expressly understood and agreed that the liability of the Surety for any and all defaults of the Principal hereunder shall be the full penal sum of this Bond. The Surety, for value received, hereby stipulates and agrees that obligations of the Surety under this Bond shall be for a term of sixty (60) days from actual date of the bid opening.

**PROVIDED, HOWEVER,** that this Bond is executed pursuant to provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to same extent as if it were copied at length herein.

**IN WITNESS WHEREOF,** the above bounden parties have executed this instrument under their several seals on the date indicated below, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**DATED** this _____ day of _____, 20_____ .

**Principal's name and address (if other than a corporation):**

_____

_____

By:_____

Title: _____

**Principal's name and address (if a corporation):**

_____

_____

By:_____

Title: _____

(Affix Corporate Seal)

**Surety's name and address:**

_____

_____

By: _____

Attorney-in-Fact (Affix Corporate Seal)

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 20_____.
My Commission Expires: _____
Resides at: _____

_____
NOTARY PUBLIC

**Agency:** _____
**Agent:** _____
**Address:** _____
**Phone:** _____

Approved As To Form: May 25, 2005
By Alan S. Bachman, Asst Attorney General

# INSTRUCTIONS AND SUBCONTRACTORS LIST FORM

The three low bidders, as well as all other bidders that desire to be considered, are required by law to submit to DFCM within 24 hours of bid opening a list of **ALL** first-tier subcontractors, including the subcontractor's name, bid amount and other information required by Building Board Rule and as stated in these Contract Documents, based on the following:

**DOLLAR AMOUNTS FOR LISTING**

**PROJECTS UNDER $500,000: ALL FIRST-TIER SUBS $20,000 OR OVER MUST BE LISTED**
**PROJECTS $500,000 OR MORE: ALL FIRST-TIER SUBS $35,000 OR OVER MUST BE LISTED**

- Any additional subcontractors identified in the bid documents shall also be listed.
- The DFCM Director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of State law.
- List subcontractors for base bid as well as the impact on the list that the selection of any alternate may have.
- Bidder may not list more than one subcontractor to perform the same work.
- If there are no subcontractors for the job that are required to be reported by State law (either because there are no subcontractors that will be used on the project or because there are no first-tier subcontractors over the dollar amounts referred to above), then you do not need to submit a sublist. If you do not submit a sublist, it will be deemed to be a representation by you that there are no subcontractors on the job that are required to be reported under State law. At any time, DFCM reserves the right to inquire, for security purposes, as to the identification of the subcontractors at any tier that will be on the worksite.

## LICENSURE:

The subcontractor's name, the type of work, the subcontractor's bid amount, and the subcontractor's license number as issued by DOPL, if such license is required under Utah Law, shall be listed. Bidder shall certify that all subcontractors, required to be licensed, are licensed as required by State law. A subcontractor includes a trade contractor or specialty contractor and does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

## 'SPECIAL EXCEPTION':

A bidder may list 'Special Exception' in place of a subcontractor when the bidder intends to obtain a subcontractor to perform the work at a later date because the bidder was unable to obtain a qualified or reasonable bid under the provisions of U.C.A.Section 63A-5-208(4). The bidder shall insert the term 'Special Exception' for that category of work, and shall provide documentation with the subcontractor list describing the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost and why the bidder was unable to obtain a qualified subcontractor bid. The Director must find that the bidder complied in good faith with State law requirements for any 'Special Exception' designation, in order for the bid to be considered. If awarded the contract, the Director shall supervise the bidder's efforts to obtain a qualified subcontractor bid. The amount of the awarded contract may not be adjusted to reflect the actual amount of the subcontractor's bid. Any listing of 'Special Exception' on the sublist form shall also include amount allocated for that work.

## GROUNDS FOR DISQUALIFICATION:

The Director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of State law. Director may withhold awarding the contract to a particular bidder if one or more of the proposed subcontractors are considered by the Director to be unqualified to do the Work or for

such other reason in the best interest of the State of Utah. Notwithstanding any other provision in these instructions, if there is a good faith error on the sublist form, at the sole discretion of the Director, the Director may provide notice to the contractor and the contractor shall have 24 hours to submit the correction to the Director. If such correction is submitted timely, then the sublist requirements shall be considered met.

**CHANGES OF SUBCONTRACTORS SPECIFICALLY IDENTIFIED ON SUBLIST FORM:**

Subsequent to twenty-four hours after the bid opening, the contractor may change its listed subcontractors only after receiving written permission from the Director based on complying with all of the following criteria.

(1) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but not is not limited to, the following reasons: the original subcontractor has failed to perform, or is not qualified or capable of performing, and/or the subcontractor has requested in writing to be released.
(2) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors.
(3) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping.
(4) Any increase in the cost of the subject subcontractor work is borne by the contractor.
(5) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.
(6) The Director will give substantial weight to whether the subcontractor has consented in writing to being removed unless the Contractor establishes that the subcontractor is not qualified for the work.

**EXAMPLE:**

Example of a list where there are only four subcontractors:

| TYPE OF WORK | SUBCONTRACTOR, "SELF" OR "SPECIAL EXCEPTION" | SUBCONTRACTOR BID AMOUNT | CONTRACTOR LICENSE # |
|---|---|---|---|
| ELECTRICAL | ABCD Electric Inc. | $350,000.00 | 123456789000 |
| LANDSCAPING | "Self" * | $300,000.00 | 123456789000 |
| CONCRETE (ALTERNATE #1) | XYZ Concrete Inc | $298,000.00 | 987654321000 |
| MECHANICAL | "Special Exception" (attach documentation) | Fixed at: $350,000.00 | (TO BE PROVIDED AFTER OBTAINING SUBCONTRACTOR) |

* Bidders may list "self", but it is not required.

**PURSUANT TO STATE LAW - SUBCONTRACTOR BID AMOUNTS CONTAINED IN THIS SUBCONTRACTOR LIST SHALL NOT BE DISCLOSED UNTIL THE CONTRACT HAS BEEN AWARDED.**

# SUBCONTRACTORS LIST

**FAX TO 801-538-3677**

**PROJECT TITLE:** _____

**Caution: You must read and comply fully with instructions.**

| TYPE OF WORK | SUBCONTRACTOR, "SELF" OR "SPECIAL EXCEPTION" | SUBCONTRACTOR BID AMOUNT | CONT. LICENSE # |
|---|---|---|---|
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We certify that:

1. This list includes all subcontractors as required by the instructions, including those related to the base bid as well as any alternates.
2. We have listed "Self" or "Special Exception" in accordance with the instructions.
3. All subcontractors are appropriately licensed as required by State law.

FIRM: _____

DATE: _____ SIGNED BY: _____

**NOTICE**: FAILURE TO SUBMIT THIS FORM, PROPERLY COMPLETED AND SIGNED, AS REQUIRED IN THESE CONTRACT DOCUMENTS, SHALL BE GROUNDS FOR OWNER'S REFUSAL TO ENTER INTO A WRITTEN CONTRACT WITH BIDDER. ACTION MAY BE TAKEN AGAINST BIDDERS BID BOND AS DEEMED APPROPRIATE BY OWNER. ATTACH A SECOND PAGE IF NECESSARY.

____/___/FVA/____/_____/___
Project No. _____

# ARRA-FUNDED CONTRACTOR'S AGREEMENT

**NOTICE: This project is funded through the American Reinvestment and Recovery Act of 2009 (ARRA) and has special federal requirements which are attached by reference per Article 4 of this Agreement.**

FOR:

THIS CONTRACTOR'S AGREEMENT, made and entered into this ____ day of _____, 20__, by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter referred to as "DFCM", and _____, incorporated in the State of _____ and authorized to do business in the State of Utah, hereinafter referred to as "Contractor", whose address is _____.

WITNESSETH: WHEREAS, DFCM intends to have Work performed at _____ _____.

WHEREAS, Contractor agrees to perform the Work for the sum stated herein.

NOW, THEREFORE, DFCM and Contractor for the consideration provided in this Contractor's Agreement, agree as follows:

**ARTICLE 1. SCOPE OF WORK.** The Work to be performed shall be in accordance with the Contract Documents prepared by _____ and entitled "_____."

The DFCM General Conditions ("General Conditions") dated May 25, 2005 and all Supplemental General Conditions ("also referred to as General Conditions") on file at the office of DFCM and available on the DFCM website (http://dfcm.utah.gov/StdDocs/index.html), are hereby incorporated by reference as part of this Agreement and are included in the specifications for this Project. All terms used in this Contractor's Agreement shall be as defined in the Contract Documents, and in particular, the General Conditions.

The Contractor Agrees to furnish labor, materials and equipment to complete the Work as required in the Contract Documents which are hereby incorporated by reference. It is understood and agreed by the parties hereto that all Work shall be performed as required in the Contract Documents and shall be subject to inspection and approval of DFCM or its authorized representative. The relationship of the Contractor to the DFCM hereunder is that of an independent Contractor.

**ARTICLE 2. CONTRACT SUM.** The DFCM agrees to pay and the Contractor agrees to accept in full performance of this Contractor's Agreement, the sum of _____ DOLLARS AND NO CENTS ($_____.00), which is the base bid, and which sum also includes the cost of a 100% Performance Bond and a 100% Bond and a 100% Payment Bond as well as all insurance requirements of the Contractor. Said bonds have already been posted by the Contractor pursuant to State law. The required proof of insurance certificates have been delivered to DFCM in accordance with the General Conditions before the execution of this Contractor's Agreement.

**ARTICLE 3. TIME OF COMPLETION AND DELAY REMEDY.** The Work shall be Substantially Complete by **_____2011**. Contractor agrees to pay liquidated damages in the amount of **$___.00** per day for each day after expiration of the Contract Time until the Contractor achieves Substantial Completion in accordance with the Contract Documents, if Contractor's delay makes the damages applicable. The provision for liquidated damages is: (a) to compensate the DFCM for delay only; (b) is provided for herein because actual damages can not be readily ascertained at the time of execution of this Contractor's Agreement; (c) is not a penalty; and (d) shall not prevent the DFCM from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.

No action shall be maintained by the Contractor, including its or Subcontractor or suppliers at any tier, against the DFCM or State of Utah for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of the DFCM or its officers, employees or agents, except as expressly provided in the General Conditions. The Contractor may receive a written extension of time, signed by the DFCM, in which to complete the Work under this Contractor's Agreement in accordance with the General Conditions.

**ARTICLE 4. CONTRACT DOCUMENTS.** The Contract Documents consist of this Contractor's Agreement, the Conditions of the Contract (DFCM General Conditions, Supplementary and other Conditions), the Drawings, Specifications, Addenda and Modifications. The Contract Documents shall also include the bidding documents, including the Invitation to Bid, Instructions to Bidders/ Proposers and the Bid/Proposal, and ARRA Special Federal Requirements Attachments 1-6 to the extent not in conflict therewith and other documents and oral presentations that are documented as an attachment to the contract.

All such documents are hereby incorporated by reference herein. Any reference in this Contractor's Agreement to certain provisions of the Contract Documents shall in no way be construed as to lessen the importance or applicability of any other provisions of the Contract Documents.

**ARTICLE 5. PAYMENT.** The DFCM agrees to pay the Contractor from time to time as the Work progresses, but not more than once each month after the date of Notice to Proceed, and only upon Certificate of the A/E for Work performed during the preceding calendar month, ninety-five percent (95%) of the value of the labor performed and ninety-five percent (95%) of the value of materials furnished in place or on the site. The Contractor agrees to furnish to the DFCM invoices for materials purchased and on the site but not installed, for which the Contractor requests payment and agrees to safeguard and protect such equipment or materials and is responsible for safekeeping thereof and if such be stolen, lost or destroyed, to replace same.

The Contractor agrees to submit for invoices all required ARRA documentation at the requested times of DFCM.

Such evidence of labor performed and materials furnished as the DFCM may reasonably require shall be supplied by the Contractor at the time of request for Certificate of Payment on account. Materials for which payment has been made cannot be removed from the job site without DFCM's written approval. Five percent (5%) of the earned amount shall be retained from each monthly payment. The retainage, including any additional retainage imposed and the release of any retainage, shall be in accordance with UCA 13-8-5 as amended. Contractor shall also comply with the requirements of UCA 13-8-5, including restrictions of retainage regarding subcontractors and the distribution of interest earned on the retention proceeds. The DFCM shall not be responsible for enforcing the Contractor's obligations under State law in fulfilling the retention law requirements with subcontractors at any tier.

**ARTICLE 6. INDEBTEDNESS.** Before final payment is made, the Contractor must submit evidence satisfactory to the DFCM that all payrolls, materials bills, subcontracts at any tier and outstanding indebtedness in connection with the Work have been properly paid and all required ARRA documentation needed before final payment can be made. Final Payment will be made after receipt of said evidence, final acceptance of the Work by the DFCM as well as compliance with the applicable provisions of the General Conditions.

Contractor shall respond immediately to any inquiry in writing by DFCM as to any concern of financial responsibility and DFCM reserves the right to request any waivers, releases or bonds from Contractor in regard to any rights of Subcontractors (including suppliers) at any tier or any third parties prior to any payment by DFCM to Contractor.

**ARTICLE 7. ADDITIONAL WORK.** It is understood and agreed by the parties hereto that no money will be paid to the Contractor for additional labor or materials furnished unless a new contract in writing or a Modification hereof in accordance with the General Conditions and the Contract Documents for such additional labor or materials has been executed. The DFCM specifically reserves the right to modify or amend this Contractor's Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work.

**ARTICLE 8. INSPECTIONS.** The Work shall be inspected for acceptance in accordance with the General Conditions.

**ARTICLE 9. DISPUTES.** Any dispute, PRE or Claim between the parties shall be subject to the provisions of Article 7 of the General Conditions. DFCM reserves all rights to pursue its rights and remedies as provided in the General Conditions.

**ARTICLE 10. TERMINATION, SUSPENSION OR ABANDONMENT.** This Contractor's Agreement may be terminated, suspended or abandoned in accordance with the General Conditions.

**ARTICLE 11. DFCM'S RIGHT TO WITHHOLD CERTAIN AMOUNT AND MAKE USE THEREOF.** The DFCM may withhold from payment to the Contractor such amount as, in DFCM's judgment, may be necessary to pay just claims against the Contractor or Subcontractor at any tier for labor and services rendered and materials furnished in and about the Work. The DFCM may apply such withheld amounts for the payment of such claims in DFCM's discretion. In so doing, the DFCM shall be deemed the agent of Contractor and payment so made by the DFCM shall be considered as payment made under this Contractor's Agreement by the DFCM to the Contractor. DFCM shall not be liable to the Contractor for any such payment made in good faith. Such withholdings and payments may be made without prior approval of the Contractor and may be also be prior to any determination as a result of any dispute, PRE, Claim or litigation.

**ARTICLE 12. INDEMNIFICATION.** The Contractor shall comply with the indemnification provisions of the General Conditions.

**ARTICLE 13. SUCCESSORS AND ASSIGNMENT OF CONTRACT.** The DFCM and Contractor, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to partners, successors, assigns and legal representatives of such other party with respect to all covenants, provisions, rights, responsibilities and ARRA Federal Requirements bound to this Contractor’s Agreement. The Contractor shall not assign this Contractor’s Agreement without the prior written consent of the DFCM, nor shall the Contractor assign any moneys due or to become due as well as any rights under this Contractor’s Agreement, without prior written consent of the DFCM.

**ARTICLE 14. RELATIONSHIP OF THE PARTIES.** The Contractor accepts the relationship of trust and confidence established by this Contractor's Agreement and covenants with the DFCM to cooperate with the DFCM and A/E and use the Contractor's best skill, efforts and judgment in furthering the interest of the DFCM; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best and most expeditious and economic manner consistent with the interests of the DFCM.

**ARTICLE 15. AUTHORITY TO EXECUTE AND PERFORM AGREEMENT.** Contractor and DFCM each represent that the execution of this Contractor's Agreement and the performance thereunder is within their respective duly authorized powers.

**ARTICLE 16. ATTORNEY FEES AND COSTS.** Except as otherwise provided in the dispute resolution provisions of the General Conditions, the prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in the District Court and/or appellate body to enforce this Contractor's Agreement or recover damages or any other action as a result of a breach thereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contractor's Agreement on the day and year stated hereinabove.

**CONTRACTOR:** _____

_____
Signature Date

Title: _____

State of _____)
)
County of _____)

_____
Please type/print name clearly

On this ____ day of _____, 20____, personally appeared before me, _____, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the _____ (title or office) of the firm and that said document was signed by him (her) in behalf of said firm.

_____
**Notary Public**

(SEAL)

My Commission Expires _____

APPROVED AS TO AVAILABILITY OF FUNDS:

_____
David D. Williams, Jr. Date
DAS Financial Director

**DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**

_____
Lynn A. Hinrichs Date
Assistant Director Construction Management

APPROVED AS TO FORM:
ATTORNEY GENERAL
May 5, 2011
By: Alan S. Bachman
Asst Attorney General

APPROVED FOR EXPENDITURE:

_____
Division of Finance Date

# PERFORMANCE BOND

(Title 63, Chapter 56, U. C. A. 1953, as Amended)

That _____ hereinafter referred to as the "Principal" and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah, hereinafter referred to as the "Obligee, " in the amount of _____ _____ DOLLARS ($_____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 20____, to construct _____ in the County of _____, State of Utah, Project No. _____, for the approximate sum of _____ _____ Dollars ($_____), which Contract is hereby incorporated by reference herein.

**NOW, THEREFORE,** the condition of this obligation is such that if the said Principal shall faithfully perform the Contract in accordance with the Contract Documents including, but not limited to, the Plans, Specifications and conditions thereof, the one year performance warranty, and the terms of the Contract as said Contract may be subject to Modifications or changes, then this obligation shall be void; otherwise it shall remain in full force and effect.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the state named herein or the heirs, executors, administrators or successors of the Owner.

The parties agree that the dispute provisions provided in the Contract Documents apply and shall constitute the sole dispute procedures of the parties.

**PROVIDED, HOWEVER,** that this Bond is executed pursuant to the Provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

**IN WITNESS WHEREOF,** the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20_____.

**WITNESS OR ATTESTATION:**

_____

**PRINCIPAL:**

_____

By: _____ (Seal)

Title: _____

**WITNESS OR ATTESTATION:**

_____

**SURETY:**

_____

By: _____ (Seal)

Attorney-in-Fact

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20_____, personally appeared before me _____ _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 20_____.

My commission expires: _____

Resides at: _____

_____

NOTARY PUBLIC

**Agency:** _____
**Agent:** _____
**Address:** _____
**Phone:** _____

Approved As To Form: May 25, 2005
By Alan S. Bachman, Asst Attorney General

# PAYMENT BOND

(Title 63, Chapter 56, U. C. A. l953, as Amended)

**KNOW ALL PERSONS BY THESE PRESENTS:**

That _____ hereinafter referred to as the "Principal," and _____ _____, a corporation organized and existing under the laws of the State of _____authorized to do business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); with its principal office in the City of _____, hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah hereinafter referred to as the "Obligee," in the amount of _____ Dollars ($_____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 20____, to construct _____ in the County of _____, State of Utah, Project No. _____ for the approximate sum of _____ _____ Dollars ($_____), which contract is hereby incorporated by reference herein.

**NOW, THEREFORE,** the condition of this obligation is such that if the said Principal shall pay all claimants supplying labor or materials to Principal or Principal's Subcontractors in compliance with the provisions of Title 63, Chapter 56, of Utah Code Annotated, l953, as amended, and in the prosecution of the Work provided for in said Contract, then, this obligation shall be void; otherwise it shall remain in full force and effect.

That said Surety to this Bond, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder, or the specifications or drawings accompanying same shall in any way affect its obligation on this Bond, and does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Work or to the specifications or drawings and agrees that they shall become part of the Contract Documents.

**PROVIDED, HOWEVER,** that this Bond is executed pursuant to the provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

**IN WITNESS WHEREOF,** the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20____.

**WITNESS OR ATTESTATION:**

_____

**PRINCIPAL:**

_____

By: _____ (Seal)

Title: _____

**WITNESS OR ATTESTATION:**

_____

**SURETY:**

_____

By: _____

Attorney-in-Fact (Seal)

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20_____, personally appeared before me _____ _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 20_____.

My commission expires: _____

Resides at: _____

_____
NOTARY PUBLIC

**Agency:** _____
**Agent:** _____
**Address:** _____
**Phone:** _____

Approved As To Form: May 25, 2005
By Alan S. Bachman, Asst Attorney General

STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

**Division of Facilities Construction and Management**

**DFCM**

# CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT _____ PROJECT NO: _____

AGENCY/INSTITUTION _____

AREA ACCEPTED _____

The Work performed under the subject Contract has been reviewed on this date and found to be Substantially Completed as defined in the General Conditions; including that the construction is sufficiently completed in accordance with the Contract Documents, as modified by any change orders agreed to by the parties, so that the State of Utah can occupy the Project or specified area of the Project for the use for which it is intended.

The DFCM - (Owner) accepts the Project or specified area of the Project as Substantially Complete and will assume full possession of the Project or specified area of the Project at _____ (time) on _____ (date).

The DFCM accepts the Project for occupancy and agrees to assume full responsibility for maintenance and operation, including utilities and insurance, of the Project subject to the itemized responsibilities and/or exceptions noted below:

_____

_____

The Owner acknowledges receipt of the following closeout and transition materials:

As-built Drawings | O & M Manuals | Warranty Documents | Completion of Training Requirements

A list of items to be completed or corrected (Punch List) is attached hereto. The failure to include an item on it does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents, including authorized changes thereof. The amount of _____(Twice the value of the punch list work) shall be retained to assure the completion of the punch list work.

The Contractor shall complete or correct the Work on the list of (Punch List) items appended hereto within _____ ____calendar days from the above date of issuance of this Certificate. The amount withheld pending completion of the list of items noted and agreed to shall be: $_____. If the list of items is not completed within the time allotted the Owner has the right to be compensated for the delays and/or complete the work with the help of independent contractor at the expense of the retained project funds. If the retained project funds are insufficient to cover the delay/completion damages, the Owner shall be promptly reimbursed for the balance of the funds needed to compensate the Owner.

_____ by: _____

CONTRACTOR (include name of firm) (Signature) DATE

_____ by: _____

A/E (include name of firm) (Signature) DATE

_____ by: _____

USING INSTITUTION OR AGENCY (Signature) DATE

_____ by: _____

DFCM (Owner) (Signature) DATE

4110 State Office Building, Salt Lake City, Utah 84114 cc: Parties Noted
telephone 801-538-3018 • facsimile 801-538-3267 • http://dfcm.utah.gov DFCM, Director

STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

**Division of Facilities Construction and Management**

**DFCM**

# PAST PERFORMANCE RATING EVALUATION

Date_____ Evaluator_____ FVN#_____

Reference checked for _____
Name of Contractor or A/E

- ☐ Corporation
- ☐ Partnership
- ☐ LLC
- ☐ Individual or Sole Proprietorship
- ☐ Other _____

Address _____ City _____ Zip _____

Phone _____ Fax _____ Firm Contact Name _____

Project referenced *(Name of Project, Agency, Location)*

Project Completion Date *(MM/YYYY)* _____ Contract Amount $ _____

Reference Contact *(Name/Title)* _____ Reference Contact Phone *(000-000-0000)* _____

What did the firm do for you? *(e.g. design work, construction service, cost auditing, studies, commissioning, other.)*

| Rating Guideline | QUALITY OF PRODUCT OR SERVICES | COST CONTROL | TIMELINESS OF PERFORMANCE | BUSINESS RELATIONS |
|---|---|---|---|---|
| **5-Exceptional** | Contractor/AE has demonstrated an exceptional performance level in any of the above four categories that justifies adding a point to the score. Contractor performance clearly exceeds the performance levels described as "Very Good" | | | |
| **4-Very Good** | Contractor/AE is in compliance with contract requirements and/or delivers quality product/service | Contractor/AE is effective in managing costs and submits current, accurate, and complete billings | Contractor/AE is effective in meeting milestones and delivery schedule | Response to inquiries, technical/service/ administrative issues is effective |
| **3-Satisfactory** | Minor inefficiencies/errors have been identified | Contractor/AE is usually effective in managing cost | Contractor/AE is usually effective in meeting milestones and delivery schedules | Response to inquires technical/service/administrative issues is somewhat effective |
| **2-Marginal** | Major problems have been encountered | Contractor/AE is having major difficulty managing cost effectively | Contractor/AE is having major difficulty meeting milestones and delivery schedule | Response to inquiries, technical/service/administrative issues is marginally effective |
| **1-Unsatisfactory** | Contractor/AE is not in compliance and is jeopardizing achievement of contract objectives | Contractor/AE is unable to manage costs effectively | Contractor/AE delays are jeopardizing performance of contract objectives | Response to inquiries, technical/service/administrative issues is not effective |

| Rate The Following | Rating 1-5 (5 = Highest) | Comments |
|---|---|---|
| Quality of Product or Service | | |
| Cost Control | | |
| Timeliness of Performance | | |
| Business Relations | | |
| **OVERALL RATING** | | ***Signature of Rater*:**_____ |

4110 State Office Building, Salt Lake City, Utah 84114 · telephone 801-538-3018 · facsimile 801-538-3267 · www.dfcm.utah.gov

## ATTACHMENT 1: Special ARRA Requirements and Commitments

### TIMELINE FOR COMPLETION OF WORK

All work must be completed and all ARRA funds must be expended by the project end date as defined by the DOE. Any funds that are not expended by this date will be revoked by the DOE and will no longer be accessible to the DFCM or the contracted entity. Currently, the project end date is scheduled as April 30, 2012. If the DOE adjusts this date, or any other rule surrounding this issue, the DFCM will notify **Contractor** immediately and the most up to date DOE rules will be complied with.

Through required reporting, the contracted entity must demonstrate that activities are being carried out and that funds are being expended in an efficient and timely manner, according to the project timetable and in anticipation of the project end date as defined by the DOE. In the event that funds are not expended in a timely manner, the DFCM reserves the right to alter or terminate the contract between the contracted entity and the DFCM, and to revoke funds from the program if deemed necessary.

### REPORTING

Reporting will be required with a minimum frequency of monthly, quarterly and annual reports and may be requested more frequently. Reporting requirements, metrics, and/or timetables may be altered at the request of any state or federal agency.

The following information will be required at a minimum frequency of monthly reports, and may be requested as frequently as weekly reports:

- DUNS number
- Narrative of Progress
- Total Hours worked on Project (all personnel employed on project both on and off site)
- Total federal ARRA expenditure
- Buy American Certifications
  1. Submit to DFCM project manager a Buy American assurance letter from manufacturer that meets the following criteria:
     - Identifies the product by name and model or model number, and
     - Includes a certificate of compliance stating the material or assemblies meet the "Buy American provisions of ARRA" and are signed by a manufacturer's representative in a position to legally bind the manufacturer.
  2. Submit to DFCM project manager copies of cuts sheets and submittals identifying the product to be used on the project by name and model or model number.
  3. Photocopies, faxes, and electronically submitted PDF files are acceptable
- Davis Bacon Weekly Certifications with Statement of Compliance WH-347
- Fringe Benefit Explanation attached to first payroll submission

The following information will be required at a minimum frequency of quarterly reports, and may be requested more frequently:

- The number of total hours worked on Project
- Energy saved (kwh/therms/gallons/BTUs/etc.)
- Renewable energy installed capacity and renewable energy generated
- Greenhouse gas emissions reduced ($CO_2$ equivalents)
- Energy cost savings

- Funds leveraged

Annual reports will likely be a summary of all information for the year as well as narrative evaluation of the program.

Additional information or metrics may be required and the required reporting metrics may be updated per the requests of the U.S. Department of Energy. Information which may be required to report upon could include (but is not limited to):

- Who is receiving Recovery Act dollars and in what amounts?
- What projects or activities are being funded with Recovery Act dollars?
- What is the completion status of such projects or activities and what impact have they had on job creation and retention?

Any updates, changes, or guidance pertaining to reporting will be communicated to the contracted entity by the DFCM and the contracted entity will be required to comply with all reporting requests.

**COMMITMENTS**

At the time of the signing of this contract, the Contractor is making the following commitments to DFCM:

1. The Contractor will use ARRA SEP Formula Grant funding to create a new program or to expand an existing program, and *not to supplant or replace any other funding*.

2. Workers, laborers and mechanics on any public projects funded directly by or assisted in whole or in part by and through funding appropriated by the American Recovery and Reinvestment Act must be paid wages at rates not less than those prevailing on projects of similar character in the locality as determined by subchapter IV of Chapter 31 of title 40, United States Code (Davis-Bacon Act). Guidance on how to comply with this provision is available at http://www.dol.gov/esa/whd/contracts/dbra.htm.

3. The Contractor will uphold the Statements made in the Utah Governor's Assurance Letter. This letter can be viewed at http://www.recovery.utah.gov/docs/Governor-ARRA-Certification-Sec-410.pdf.

4. The Contractor acknowledges that, as a contractor of DFCM, a sub-recipient of the ARRA SEP Formula Grant, The Contractor will be held to all of the same terms and conditions as DFCM under the ARRA, including compliance with Buy American, Davis Bacon and SHPO compliance, and all reporting requirements that will be collected by DFCM, and will comply with all such terms and conditions as they are issued throughout the lifespan of the project or program.

5. The Contractor will comply with all of the requirements and limitations contained in the U.S. Department of Energy Funding Opportunity Number DE-FOA-0000052. (This document is on file with DFCM and is available on the DFCM web site at http://dfcm.utah.gov/StdDocs/index.html.)

# Attachment 2: Federal Flow Down Requirements

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## Part 1: Subgrant Flow Down Provisions For State Governments

### RESOLUTION OF CONFLICTING CONDITIONS – MANDATORY FLOW DOWN REQUIRED

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

### AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Grant and Cooperative Agreement cover page, plus the following:

a. Special terms and conditions.
b. Attachments:

| Attachment No. | Title |
|---|---|
| 1 | Intellectual Property Provisions |
| 2 | Federal Assistance Reporting Checklist |
| 3 | Budget Pages |
| 4 | State Annual File |
| 5 | State Master File |
| 6 | Wage Determination |

c. Applicable program regulations [*Specify*][*Date*] .
d. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov and if the award is for research and to a university or non-profit, the Research Terms & Conditions and the DOE Agency Specific Requirements at http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp.
e. Application/proposal as approved by DOE.
f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

### PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disburse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close as is administratively feasible to actual disbursements.

c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

### REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.

b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional

funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

**USE OF PROGRAM INCOME - ADDITION**

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

**STATEMENT OF FEDERAL STEWARDSHIP – MANDATORY FLOW DOWN REQUIRED**

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

**SITE VISITS – MANDATORY FLOW DOWN REQUIRED**

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

**REPORTING REQUIREMENTS -- MANDATORY FLOW DOWN REQUIRED**

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

b. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

**PUBLICATIONS – MANDATORY FLOW DOWN REQUIRED**

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EE0000095

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any

warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

**FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS – MANDATORY FLOW DOWN REQUIRED**

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

**INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION – MANDATORY FLOW DOWN REQUIRED**

a. The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced on the Agreement Face Page. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.

b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf

**LOBBYING RESTRICTIONS – MANDATORY FLOW DOWN REQUIRED**

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

**NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS – MANDATORY FLOW DOWN REQUIRED**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

**DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS – MANDATORY FLOW DOWN REQUIRED**

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the recipient's facilities, or (ii) any costs which may be incurred by the recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

**HISTORIC PRESERVATION -- MANDATORY FLOW DOWN REQUIRED**

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: http://www.ncshpo.org/find/index.htm. THPO contact information is available at the following link: http://www.nathpo.org/map.html .

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

**Part 2: Flow Down Terms For ARRA Awards – See Prescriptions for Applicability**

**Prescription: This clause must be included in all grants, cooperative agreements and TIAs (new or amended) when funds appropriated under the Recovery Act are obligated to the agreement.**

**SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

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

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds – the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or

with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

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

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data
The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceablity of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Request for Reimbursement (this version is included in WAP/SEP awards with states)

RESERVED

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict or interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in supporting of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

**Prescription: The following award term shall be used to implement the recipient reporting and registration requirements in the Recovery Act section 1512.**

**REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT**

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

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

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at http://www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

**Prescription: When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work and the total project value is estimated less than $7,443,000, the agency shall use this award term.**

**REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

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

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

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

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

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

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

(b) Domestic preference. (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

_____

[ Award official to list applicable excepted materials or indicate "none" ]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act . (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

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

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

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

Foreign and Domestic Items Cost Comparison

| Description | Unit of measure | Quantity | Cost (dollars)* |
|---|---|---|---|
| Item 1: | | | |
| Foreign steel, iron, or manufactured good | _____ | _____ | _____ |
| Domestic steel, iron, or manufactured good | _____ | _____ | _____ |
| Item 2: | | | |
| Foreign steel, iron, or manufactured good | _____ | _____ | _____ |
| Domestic steel, iron, or manufactured good | _____ | _____ | _____ |

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

[Include other applicable supporting information.]
[*Include all delivery costs to the construction site.]

**Prescription: When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work with a total project value over $7,443,000 that involves iron, steel, and/or manufactured goods materials covered under international agreements, the agency shall use this award term.**

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

(a) *Definitions.* As used in this award term and condition—

*Designated country* —(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

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

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

*Designated country iron, steel, and/or manufactured goods* —(1) Is wholly the growth, product, or manufacture of a designated country; or

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

*Domestic iron, steel, and/or manufactured good* —(1) Is wholly the growth, product, or manufacture of the United States; or

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

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

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

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

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

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

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

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

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

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of $7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

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

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

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

**Foreign and Domestic Items Cost Comparison**

| **Description** | **Unit of measure** | **Quantity** | **Cost (dollars)*** |
|---|---|---|---|
| *Item 1:* | | | |
| Foreign steel, iron, or manufactured good | _____ | _____ | _____ |
| Domestic steel, iron, or manufactured good | _____ | _____ | _____ |
| *Item 2:* | | | |
| Foreign steel, iron, or manufactured good | _____ | _____ | _____ |
| Domestic steel, iron, or manufactured good | _____ | _____ | _____ |

**Prescription: When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use this award term.**

**WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT**

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

**Prescription: The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures.**

**RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING**

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at http://www.whitehouse.gov/omb/circulars/a102/a102.html.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at http://www.whitehouse.gov/omb/circulars/a133/a133.html. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

**Prescription: Include for ARRA awards when WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT article is used.**

**DAVIS BACON ACT REQUIREMENTS**

*A. **Definitions.*** For purposes of this term, the Contract Work Hours and Safety Standards Act term, and the Recipient Functions term, 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 terms, 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 terms, 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 term) 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 Term 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 Term, 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 Term. 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 term. 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 Term, the appropriate information is being maintained under paragraph D(1) of this Term, 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 Term.

(e) The falsification of any of the certifications in Paragraph D, Payrolls and Basic Records, of this Term 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 Term 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 Term, 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 Term 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 Term entitled "Davis Bacon Act Requirements" and such other terms 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 Term. The Subrecipient shall be responsible for the compliance by Contractor with all of the requirements contained in this Term.

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

**Contract Work Hours and Safety Standards Act**

This Term 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 Term, 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 term 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 CWSSHA 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 term 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 term set forth in CWHSSA, paragraph B of this Term.

(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 term set forth in CWHSSA, paragraph B of this Term.

D. Subcontracts. The Subrecipient shall insert in a Contract and a Contractor shall insert in any lower tier subcontracts, the terms set forth in these CWHSSA paragraphs (A) through (D) and also a provision requiring the Contractors to include this CWHSSA Term 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 Davis-Bacon Act Requirements term, 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 the Davis Bacon Requirements term.

## Attachment 3: Federal Assurances

I. The Contractor hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements as indicated below for said type of institution.

1. Hospitals: 10 CFR 600, OMB Circular A-110, and Appendix E of 45 CFR 74.

2. State Agencies, Public Schools, Local Governments, and Indian Tribal Governments: 10 CFR 600, the "Common Rule," and OMB Circulars A-128 and A-87.

3. Publicly funded Colleges and Universities: 10 CFR 600, and OMB Circulars A-110, A-133, and A-21.

4. Private Non-Profit Organizations - Private Schools: 10 CFR 600, and OMB Circulars A-110, A-133, and A-122.

5. Individuals/Private For-Profit Organizations: Not covered by OMB Circulars.

II. Also, the Contractor assures and certifies with respect to the project that:

(1) LEGAL AUTHORITY. It possesses legal authority to apply for the grant; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, if necessary, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(2) CIVIL RIGHTS. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant received federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

(3) CIVIL RIGHTS. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and 10 CFR Part 1040 prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment, or, (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

(4) DISPLACED PERSONS. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property

Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.

(5) HATCH ACT. It will comply with the provision of the Hatch Act which limits the political activity of employees.

(6) FAIR LABOR STANDARDS. It will comply with minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of state and local governments.

(7) CONFLICT OF INTEREST. It will establish safeguards to prohibit employees from using their positions for a purchase that is, or gives the appearance of, being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

(8) RECORDS ACCESS. It will give the grantor agency or the Comptroller General, through any authorized representative, the access to and the right to examine all records, books, papers or documents related to the grant.

(9) ENVIRONMENTAL PROTECTION AGENCY'S LIST OF VIOLATING FACILITIES. It will insure that the facilities under its ownership, lease, or supervision, which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

(10) FLOOD INSURANCE. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of and federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guarantee, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.

(11) NATIONAL HISTORIC PRESERVATION. It will assist the federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 USC 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of

Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the federal grantor agency to avoid or mitigate adverse effects upon such properties.

(12) DEBARMENT AND SUSPENSION. It, 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. Where the contractor is unable to certify to any of the statements in this certification, such contractor shall attach an explanation to this contract.

(13) ENVIRONMENTAL STANDARDS. If the amount of this contract exceeds $100,000, it agrees to comply with applicable standards, regulations, or orders issued pursuant to the Clean Air Act of 1970 (42 USC 1857 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq.) as amended. Violations shall be reported to DOE and the Regional Office of the Environmental Protection Agency.

(14) LOBBYING CERTIFICATION. If the amount of this contract exceeds $100,000, it will comply with the following:

1. No federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the

required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(15) PRIVACY ACT. The Contractor and its subcontractors will maintain no information about any individual in a manner which would violate the provisions of the Privacy Act of 1974, Public Law 93-579 as amended.

(16) LIABILITIES AND LOSSES. The U.S. Department of Energy assumes no liability with respect to any damage or loss arising out of any activities undertaken with the financial support of this grant.

ATTACHMENT 4

# FINAL DAVIS BACON ACT (DBA) CLAUSES AS APPROVED BY THE DEPARTMENT OF LABOR (DOL) FOR USE IN FINANCIAL ASSISTANCE PROGRAMS OTHER THAN WEATHERIZATION ASSISTANCE PROGRAMS AND LOAN PROGRAMS November 6, 2009

**Clause XXX. Davis Bacon Act and Contract Work Hours and Safety Standards Act.**

**Definitions:** For purposes of this clause, Clause XXX, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

(1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance 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 Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.

(2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."

(3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

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

(5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government 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.

(6) "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.

(7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

**(a) Davis Bacon Act**

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

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

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

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under

this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and

Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or

the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work

performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the

procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

**(b) Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

ATTACHMENT 5 WAGE DETERMINATION TABLE

General Decision Number: UT100037 05/13/2011 UT37

Superseded General Decision Number: UT20080037

State: Utah

Construction Type: Building

County: Davis County in Utah.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

| Modification Number | Publication Date |
|---|---|
| 0 | 03/12/2010 |
| 1 | 04/09/2010 |
| 2 | 07/16/2010 |
| 3 | 08/20/2010 |
| 4 | 09/03/2010 |
| 5 | 10/29/2010 |
| 6 | 11/19/2010 |
| 7 | 12/17/2010 |
| 8 | 12/31/2010 |
| 9 | 01/21/2011 |
| 10 | 02/04/2011 |
| 11 | 05/13/2011 |

BRUT0001-002 06/01/2009

| | Rates | Fringes |
|---|---|---|
| BRICKLAYER | $ 20.75 | 6.55 |

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CARP0140-001 11/01/2007

| | Rates | Fringes |
|---|---|---|
| CARPENTER (Form Work Only) | $ 20.19 | 6.74 |

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ELEC0354-008 06/01/2010

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN, Excluding Low Voltage Wiring and Installation of HVAC Temperature Controls | $ 28.09 | 4.3%+$8.00 |

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ENGI9993-011 07/01/2008

| | Rates | Fringes |
|---|---|---|
| OPERATOR: Power Equipment | | |

(CRANES & ATTACHMENTS)
(1) Up to 35 tons.....$ 24.86 12.71
(2) Over 35 tons to 100
tons.....$ 26.15 12.71
(3) Over 100 tons.....$ 27.49 12.71
OPERATOR: Power Equipment
(1) Mechanic.....$ 26.71 12.71
(2a) Grader/Blade.....$ 25.05 12.71
(3) Front End loader
(over 5 cu. yds).....$ 24.53 12.71
(4) Bulldozer, Front End
Loader (2 to 5 cu. yds.)....$ 23.53 12.71
(5) Asphalt Roller, Front
End Loader (Under 2 cu.
yds.), Oil Distributor.....$ 22.53 12.71
(6) Screed.....$ 21.57 12.71
(7) Roller (Dirt and Grade
Compaction).....$ 20.66 12.71

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IRON0027-013 07/01/2009

| | Rates | Fringes |
|---|---|---|
| IRONWORKER, ORNAMENTAL | $ 26.61 | 11.60 |

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IRON0847-001 01/01/2010

| | Rates | Fringes |
|---|---|---|
| IRONWORKER, REINFORCING | $ 26.61 | 11.60 |

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LABO0295-007 07/01/2010

| | Rates | Fringes |
|---|---|---|
| Laborer: Mason Tender (Brick, Cement/Concrete) | $ 15.65 | 5.75 |

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* PAIN0077-001 08/02/2010

| | Rates | Fringes |
|---|---|---|
| PAINTER: Brush, Roller and Spray | $ 18.85 | 5.45 |

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PLUM0140-008 01/01/2011

| | Rates | Fringes |
|---|---|---|
| PIPEFITTER, Excluding HVAC Pipe Installation | $ 30.77 | 11.04 |

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PLUM0140-009 01/01/2011

| | Rates | Fringes |
|---|---|---|
| PLUMBER (Including HVAC Pipe | | |

Installation).....$ 30.77 11.04

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SHEE0312-006 07/01/2010

| | Rates | Fringes |
|---|---|---|
| SHEETMETAL WORKER (HVAC Duct Installation Only)..... | $ 30.71 | 10.38 |

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SUUT2008-002 07/14/2008

| | Rates | Fringes |
|---|---|---|
| CARPENTER, Includes Acoustical Ceiling Installation, and Foam Insulation (Excludes Drywall Hanging, Metal Stud Installation, and Form Work)..... | $ 16.47 | 4.14 |
| CEMENT MASON/CONCRETE FINISHER... | $ 15.33 | 2.19 |
| DRYWALL HANGER, Includes Metal Stud Installation..... | $ 15.45 | 0.00 |
| ELECTRICIAN (Low Voltage Wiring and Installation of HVAC Temperature Controls Only)..... | $ 21.00 | 4.61 |
| HVAC Mechanic (System Installation Only)..... | $ 32.79 | 7.31 |
| IRONWORKER, STRUCTURAL..... | $ 26.13 | 2.40 |
| LABORER: Common or General..... | $ 12.06 | 3.14 |
| LABORER: Landscape..... | $ 10.52 | 0.00 |
| LABORER: Power Tool Operator (Hand Drill, Jackhammer and Power Saw Only)..... | $ 11.70 | 0.00 |
| OPERATOR: Backhoe/Excavator..... | $ 16.28 | 6.55 |
| ROOFER..... | $ 13.70 | 1.17 |
| SHEETMETAL WORKER, Excluding HVAC Duct Installation..... | $ 23.61 | 5.45 |
| SPRINKLER FITTER..... | $ 18.95 | 5.55 |

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TEAM0222-011 07/01/2008

| | Rates | Fringes |
|---|---|---|
| TRUCK DRIVER (Articulated)..... | $ 20.73 | 8.43 |

| | | |
|---|---|---|
| TRUCK DRIVER (Flat Rack, Bulk Cement, Semi-trailers, Mud/Banding and Paint) | | |
| Less than 10 tons | $ 18.06 | 8.43 |
| 10 tons to less than 15 tons | $ 18.21 | 8.43 |
| 15 tons and less than 20 tons | $ 18.31 | 8.43 |
| 20 tons and over | $ 18.46 | 8.43 |
| Pickup Truck | $ 17.99 | 8.43 |
| TRUCK DRIVER (Oil Spreader) | $ 18.86 | 8.43 |
| TRUCK DRIVER (Transit Mix) | | |
| 0 cu. yds. to 8 cu. yds | $ 18.39 | 8.43 |
| Over 8 cu. yds. to 14 cu. yds | $ 18.49 | 8.43 |
| TRUCK DRIVER (Water, Fuel & Oil Tank) | | |
| 0 to less than 1,200 gal | $ 18.04 | 8.43 |
| 1,200 gal. to less than 2,500 gal | $ 18.16 | 8.43 |
| 2,500 gal. to less than 4,000 gal | $ 18.31 | 8.43 |
| 4,000 gal. to less than 6,000 gal | $ 18.61 | 8.43 |
| 6,000 gal. to less than 10,000 gal | $ 18.86 | 8.43 |
| 10,000 gal. to less than 15,000 gal | $ 19.11 | 8.43 |
| 15,000 gal. to less than 20,000 gal | $ 18.36 | 8.43 |
| 20,000 gal. to less than 25,000 gal | $ 19.71 | 8.43 |
| Over 25,000 gal | $ 19.86 | 8.43 |
| TRUCK DRIVER: Dump Truck (Includes Bottom-end or side) | | |
| Less than 8 cu. yds | $ 18.16 | 8.43 |
| 8 cu. yds. and less than 14 cu. yds | $ 18.31 | 8.43 |
| 14 cu. yds. and less than 35 cu. yds | $ 18.46 | 8.43 |
| 35 cu. yds. and less than 55 cu. yds | $ 18.66 | 8.43 |
| 55 cu. yds. and less than 75 cu. yds | $ 18.86 | 8.43 |
| 75 cu. yds. and less than 95 cu. yds | $ 19.06 | 8.43 |
| 95 cu. yds. and less than 105 cu. yds | $ 19.26 | 8.43 |
| 105 cu. yds. and less than 130 cu. yds | $ 19.38 | 8.43 |
| TRUCK DRIVER: Lowboy Truck | $ 21.238 | 8.43 |

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in he matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party
(those affected by the action) can request review and reconsideration from
the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).
Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested
party's position and by any information (wage payment data, project
description, area practice material, etc.) that the requestor considers
relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested
party may appeal directly to the Administrative Review Board (formerly the
Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION